Ex Libris

JOHN AND MARTHA DANIELS

IMPORTANT SCOTTISH DUEL
of 1822

Copy

Edinr. June 20. 1826.

Dear Sir

Since I valued Dr Stuart's books, there has been a very material fall in the prices, and if the amount of my valuation was £800., I think it hardly probable, that they would now bring £700., with six months credit, at least I would not pledge myself to do so.

I am Dear Sir Yours respectfully

James Stuart Esq

Jno B Clark

My dear Betsy

I offer seven hundred and fifty pounds for my father's books, with six months credit - You may take what books you choose for yourself or others, & the books you choose valued by Mr Black, at the same rate as £750. for the whole

Your affty

Edinr June 20
1826

J Stuart

Accept, (signed) J & A Stuart

It is also understood in consequence of the memorandum left by my father now seen that the ecclesiastical books shall be looked on

by Mr Black, & that I shall give an
additional sum for them, which he or he can
Mr Cadell shall fix, as I shall.

20. June 1826 H Stuart

Chas Stuart

Jas. C. A. Stuart

2.

Dr Charles Bowles

300
75
375

THE

TRIAL

OF

JAMES STUART, ESQ.

YOUNGER OF DUNEARN,

BEFORE THE

High Court of Justiciary,

AT EDINBURGH,

ON MONDAY, JUNE 10. 1822.

Taken in Short Hand.

WITH AN APPENDIX OF DOCUMENTS.

EDINBURGH:

PRINTED FOR ARCHIBALD CONSTABLE AND CO. EDINBURGH;
HURST, ROBINSON, AND CO. AND JAMES RIDGWAY,
LONDON.

1822.

*** This Account of Mr STUART's Trial has been Prepared under the Direction of his Friends, and in a way which enables the Publishers to state, that the utmost reliance may be placed on its Correctness and Accuracy.

Printed by George Ramsay and Company.

CONTENTS.

PRELIMINARY PROCEEDINGS.

Indictment - - - - - - Page 1
List of Witnesses for Prosecution - - 3
List of Assize - - - - - 5
Documents referred to in the Indictment.
Letter of Sir Alexander Boswell - - 6
Whig Song - - - - - ib.
Letter signed Ignotus - - - - - 8
Character of Mr Perry - - - - - 9
Petition of James Stuart, Esq. - - - - - 11
Answers for the Lord Advocate - - - - 13
Examination of Witnesses as to Productions - - - 15
Defences for Mr Stuart against the Indictment - - 19

TRIAL.

Mr Cockburn's Speech for the Pannel - - 22
Evidence for the Crown - - - - 44
Evidence for the Defence - - - - 88
Lord Advocate's Speech - - - - 131
Mr Jeffrey's Speech for the Pannel - - 135
Lord Justice-Clerk's Charge - - - 171
Verdict of the Jury - - - - - 185

APPENDIX.

No. 1. Extract, Letter from Lord Chief Commissioner to Mr Stuart - - - - Page 1
2. Do. do. do. - - ib.
3. Resolutions of a General Meeting of the Noblemen, Freeholders, &c. Western District of Fifeshire 2
4. Letter, the Earl of Kellie to Mr Stuart - 8
5. Extract from an Article in the first number of the Glasgow Sentinel, entitled, "Mr James Stuart and the Lord Advocate." - - - ib.
6. Extracts from the Answers for Robert Alexander and William Borthwick to Mr Stuart's Condescendence - - - - - 10
7. Letter signed "Mark Tod." - - - 11
8. "The late Lieutenant James Stuart." - - 14
9. Letter, Sir Alexander Boswell to Mr Maconochie 15
10. Letter, Mr Stuart to Mr Gibson - - - 17
11. Ditto to ditto - - - - - ib.
12. Note from Mr Stuart to his Excellency Sir Charles Stuart - - - - - - 18
13. List of Witnesses on the part of the Pannel - 19
14. Interlocutor of Relevancy - - - 20

TRIAL

OF

JAMES STUART, Esq.

PRELIMINARY PROCEEDINGS.

On the 25th of May 1822, a Citation was left at Mr Stuart's house, No. 2, North Charlotte Street, Edinburgh, charging him to appear before the High Court of Justiciary to be held at Edinburgh on Monday, the 10th of June 1822, at ten o'Clock forenoon, to underlie the Law for the crime of Murder, on the following Indictment:

"James Stuart, Clerk to the Signet, lately residing in Charlotte Street of Edinburgh, you are Indicted and Accused at the instance of Sir William Rae of St Catharines, Baronet, his Majesty's Advocate, for his Majesty's interest: That albeit, by the laws of this and of every other well governed realm, Murder is a crime of an heinous nature, and severely punishable: Yet true it is and of verity, that you the said James Stuart are guilty of the said crime, actor, or art and part: In so far as, you the said James Stuart having conceived malice and ill-will against the late Sir Alexander Boswell of Auchinleck, Baronet, and having formed the unlawful design of challenging the said Sir Alexander Boswell, and others of the lieges, to fight a duel, or duels, you did, upon the 9th, or one or other of the days of March 1822, in order to enable you the better to accomplish your said unlawful design, repair to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents connected with said newspaper, which were then in the premises

in Nelson Street of Glasgow occupied by Robert Alexander, editor and proprietor of the said newspaper, and in the lawful possession and custody of the said Robert Alexander; and the said William Murray Borthwick having been liberated from jail, as arranged and concerted by or with you, and having, on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried, away from the said premises in Nelson Street of Glasgow sundry writings, the property, or in the lawful possession of the said Robert Alexander; and having brought, or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings: And having found, or pretended to have found among them, some writings holograph of the said Sir Alexander Boswell, you did wickedly and maliciously challenge the said Sir Alexander Boswell to fight a duel with you: and a time and place of meeting having been concerted, you did, upon Tuesday the 26th day of March 1822, or upon one or other of the days of that month, or of February immediately preceding, or of April immediately following, upon the farm of Balbarton, in the shire of Fife, a little to the northward of the road from the village of Auchtertool to the burgh of Kirkaldy, and about three quarters of a mile or thereby distant from the said village of Auchtertool, in the said shire, wickedly and maliciously discharge at the said Sir Alexander Boswell a pistol loaded with ball, whereby the said Sir Alexander Boswell was mortally wounded, the ball having entered near the root of the neck on the right side, and shattered the collar bone, of which mortal wound the said Sir Alexander Boswell died in the course of the next day, and was thus murdered by you the said James Stuart: And you the said James Stuart, conscious of your guilt in the premises, did abscond and flee from justice: And a letter, bearing to be dated 'Auchinleck, Novr. 7th 1821,' and to be subscribed, 'Alexander Boswell;' as also a writing, entitled 'Whig Song,' and addressed on the back, 'For Mr 'Alexander, Sentinel Office, Glasgow;' a letter or writing, bearing to be dated Dumbarton, Decr. 17th 1821,' subscribed 'Ignotus;' and a writing entitled 'James Perry, Esqr. 'late proprietor and editor of the Morning Chronicle,' and addressed on the back 'Mr Alexander, Sentinel Office, 'Glasgow,' being all to be used in evidence against you at your trial, will be lodged in due time in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the

same: At least, time and place above libelled, the said Sir Alexander Boswell was murdered; and you the said James Stuart are guilty thereof, actor, or art and part. All which, or part thereof, being found proven by the verdict of an Assize, before the Lord Justice-General, the Lord Justice-Clerk, and Lords Commissioners of Justiciary, you the said James Stuart Ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

DUNN. M'NEILL, *A. D.*

LIST OF WITNESSES.

1 James Earl of Rosslyn, now or lately residing at Dysart House, parish of Dysart, in the shire of Fife.
2 John Douglas of Lockerby, now or lately residing in Shandwick Place of Edinburgh.
3 James Brougham, barrister at law, Lincoln's Inn Fields, London.
4 George Wood, surgeon in Edinburgh.
5 Robert Liston, now or lately surgeon in Edinburgh.
6 James Brown Johnston, now or lately physician in Kirkcaldy, in the shire of Fife.
7 Dr John Thomson, professor of military surgery in Edinburgh.
8 Alexander Boswell, writer to the signet, now or lately residing in Edinburgh.
9 John Waugh Brougham, wine-Merchant in Edinburgh
10 Andrew Watt, now or lately farmer at Balbarton, in the Parish of Kinghorn, and shire of Fife.
11 David Blair, now or lately apprentice to, and residing with Peter Moyes, smith at Baidler-toll-bar, in the parish of Kinghorn, and shire of Fife.
12 The said Peter Moyes.
13 William M'Kenzie, now or lately coachman to Claud Irvine Boswell, lately one of the Senators of the College of Justice, and now or lately residing at Balmuto House, in the parish of Kinghorn, and shire of Fife.
14 Alexander Struthers, now or lately butler to the said Claud Irvine Boswell.
15 William Spalding, writer in Edinburgh, now or lately residing in Pitt Street, Edinburgh, and now or lately in the employment of Alexander Young, Roger Ayton, and Robert Rutherford, or one or other of them, writers to the signet in Edinburgh.

16 William Henderson, now or lately writer in Hamilton, in the county of Lanark.
17 Felix Dougharty, now or lately clerk of the said William Henderson, and now or lately residing in or near Hamilton aforesaid.
18 Loudon Robertson, lately compositor in the Glasgow Sentinel Office, Nelson Street, Glasgow, and now or lately residing in Dundee.
19 Alexander Ure, now or lately writer in Glasgow.
20 William Bankhead, now or lately clerk of the said Alexander Ure.
21 Adam Duff, sheriff-depute of the shire of Edinburgh
22 James Currie, now or lately clerk in the sheriff-clerk's office, Edinburgh.
23 Robert Bankhead, now or lately waiter in the Tontine Inn or Hotel of Glasgow.
24 William M'Comb, now or lately waiter or boots in the said Tontine Inn of Glasgow.
25 Robert Anderson, waiter, now or lately residing in Gallowgate of Glasgow.
26 William Scott, now or lately waiter in the Tontine Inn or Hotel of Glasgow.
27 Robert Alexander, now or lately editor and proprietor of the Glasgow Sentinel, Nelson Street, Glasgow.
28 David Alexander, now or lately clerk of the said Robert Alexander.
29 William Richardson, now or lately compositor in the Glasgow Sentinel Office, Nelson Street, Glasgow.
30 William Miller, now or lately in the employment of the said Robert Alexander in the Glasgow Sentinel Office aforesaid.
31 John Wilson, now or lately compositor in the Glasgow Sentinel Office aforesaid.
32 Alexander M'Glashan, now or lately compositor in the Glasgow Sentinel Office aforesaid.
33 William Home Lizars, engraver, James's Square, Edinburgh.
34 Thomas Clerk, engraver, High Street, Edinburgh.
35 James Walker, tutor to Sir James Boswell, Bart. of Auchinleck, now or lately residing at Wellwood Lodge, parish of St Cuthberts, and county of Edinburgh.
36 Miss Janet Theresa Boswell, daughter of the deceased Sir Alexander Boswell of Auchinleck, Bart. now or lately residing at Wellwood Lodge aforesaid.

DUNN. M'NEILL, *A. D.*

LIST OF ASSIZE.

County of Edinburgh.

John Borthwick of Crookstone.
John Pringle of Symington.
Thomas Adinston of Carcant.
William Pagan of Linburn.
James Forrest of Comiston.
John Wauchope of Edmonstone.
Sir Alexander Charles Maitland Gibson of Cliftonhall, Bart.
Sir John Hope of Craighall, Bart.
James Watson of Saughton.
George Reid of Rathobank.
John Inglis of Auchindinny.
James Haig of Lochrin.
John Alexander Higgins of Neuck.
John Thomson of Burnhouse.

Haddingtonshire.

William Hunter of Tynefield.
John Anderson of Whitburgh.
William Aitchison younger of Drummore.
Hugh Turnbull of Branxton.
James Balfour of Whittinghame.

County of Linlithgow.

Sir James Dalyell, Bart. of Binns.
Gabriel Hamilton Dundas of Duddingstone.
James Dundas of Dundas.
Lieutenant-Colonel Andrew Gillon of Wallhouse
Alexander Learmonth of Crossflats.

City of Edinburgh.

David Brown, Clothier in Edinburgh.
David Murray, spirit dealer there.
Robert Paterson, ironmonger there.
John Milne, ironmonger there.
George Callum, tinsmith there.
Adam Elder, carver and gilder there
William Rodgers, haberdasher there.
Andrew Kerr, upholsterer there.
Patrick Crichton, coachmaker there
Robert Stevenson, engineer there.
John Leitch, clothier there.

John Hill, clothier there.
James Scrimzeour, cabinet-maker there.
Thomas Wilkie, cabinet-maker, Queen's Place.

Town of Leith,

Thomas Macritchie, wine-merchant in Leith.
John Somerville, tanner there.
James Veitch, brewer there.
James Allan, wine-merchant there.
Mathew Smellie, writer there.
Peter Latta Wilson, merchant there.
William Telfer, merchant there.

GEO. FERGUSSON.
AD. GILLIES.
ARCHD. CAMPBELL.

The writings founded on in the Indictment are of the following tenor:

Sir, *Auchinleck, Nov. 17th* 1821.

A friend of mine, having recomended the *Sentinel*, and having the satisfaction to see it termed the "Phœnix of the Beacon" in a copy of the Scotsman, which the same friend has sent me, I beg that you will have the goodness to order a copy of the Sentinel to be sent, addressed

Sir A. Boswell of Auchinleck, Mauchline.

I am, Sir, your obedient Servant,
ALEXANDER BOSWELL.

The Editor of the Sentinel, Glasgow.

WHIG SONG,

Supposed to be written by one of the *James's*, certainly not by King James the I. or King James the V. but probably by one of the house of Stuart.

TUNE—*Sheriff Muir.*

THERE's some say that they're Whigs,
And some say that we're Whigs,
And some say there's nae Whigs ava, man,
But ae thing I'm sure,
A pauky Whig do-er
'S the Whig that out-whigifies a', man.
Chorus.—And they crack and we tak,
And they tak and we crack,
And we tak and they crack awa', man.

For *conscience* the *auld* Whigs
War *sterlin'* and bauld Whigs,
And gied their oppressors a claw, man;
But *now* Whigs for *sillar*,
(Their calf on the Pillar,)
Ken nought about conscience ava, man.
And they crack and we tak, &c.

The de'il took the lawyer,
And left the poor sawyer,
He was na a mouse to his paw, man;
Oure straught was his mark, man,
But a Whig Signet Clerk, man,
Can ony thing, ony way thraw, man.
And they crack and we tak, &c.

They rant about Freedom,
But when ye hae fee'd 'em,
Cry het or cry cauld, and they'll blaw, man;
Tak him maist rampagant,
And mak him King's agent,
And hech! how his fury will fa', man?
And they crack and we tak, &c.

Ther's stot-feeder Stuart,
Kent for that fat-cow—art,
How glegly he kicks ony ba', man;
And Gibson, lang chiel, man,
Whase height might serve weel, man,
To read his ain name on a wa', man.
And they crack and we tak, &c.

Your knights o' the pen, man,
Are a' *gentlemen*, man,
Ilk *body's* a *limb* o' the law, man;
Tacks, bonds, precognitions,
Bills, wills, and petitions,
And *ought* but a *trigger* some draw, man.
And they crack and we tak, &c.

Sae foul fa' backbiters,
Wha rin down sic vriters,
Wha fatten sae brave and sae braw, man;
Ilk Whiggish believer,
Ilk privileged riever,
Come join in a hearty huzza, man.
For they crack, and we tak, &c.

Addressed on the back thus,—

For Mr Alexander, Sentinel Office, Glasgow.

TO THE EDITOR.

SIR, *Dumbarton, Dec.* 17, 1821.

AFTER the licence which we all have remarked, in the paper devoted to what are called the Whigs, and which, with becoming forbearance, was suffered to pass with impunity, I regret to see, by your paper, that the vindictive spirit of that party has been directed to an article in your paper, and that you are thereby invited to partake of that luxurious boon of the Legislature, a Jury Court Trial.

Much has been said about *personality*, but something may yet be said. If you had been base enough to pry into the *private life* of any *private* individual, and had dragged the result of unworthy research before the public, there are not words adequate to express the reprobation which such conduct must have merited. Of this, however, I need not say that I acquit you; for no one accuses you, and I feel confident that you are incapable of so reprehensible an act.

But while, by the concurrent admission of all men, those who press forward as public men, or notorious men, subject themselves to public animadversion, your error must be in the choice of your subject, and that may be serious or trivial.

You are prosecuted, it seems, by Mr James Stuart of Dunearn, once, certainly, a private individual, but a man now known to us, because he has bustled out of his element. If, therefore, you had held up to public ridicule Mr James Stuart, as an itinerant orator from county to county, and from meeting to meeting, who could have blamed you? Every *public performer* subjects himself to criticism—orators as well as players. Orator Hunt has had it; why should not Orator Stuart? Orator Hunt, after threatening to thrash the *lesser* man, Mr Morley of the British Hotel, showed, in the cant language, the white feather, and *refused to fight him*, and was deservedly stigmatized and laughed at. If Mr Stuart had done this, the parallel would have been perfect.

But, Sir, you are dragged before this purse-squeezing Jury Court, I am told, because, in reliance on the much advocated liberty of the press, and looking to the practice of the Whig papers, and particularly that pure jewel the Scotsman, you have ventured to repeat, what I am also told must have been well known to Mr James Stuart, was as currently the topic of general conversation in Edinburgh as any subject which interests the many, either from its gravity or its absurdity. If I am not misinformed, and if utterance is

publication, he might have selected from coffeehouses, or clubs, some individual whose *dimensions* might have been unobjectionable, (if other circumstances might also be equally so,) and, on that chosen individual, by judicious management, might have rubbed himself again into brilliancy. But he has judged otherwise, and has selected you, Mr Sentinel, for his Whiggish vengeance, and summons you to lists where the winner gains no *honour*, and the loser, though he may lose much, may incur no *disgrace*. Beaten at their own weapons, like discomfited bullies, they are the first to call the watch; and, without inquiry as to provocation, or who struck the first blow, he who struck the blow *that is noticed* must go before his worship.

I approve of the determined stand which you have made against Whig and Radical tyranny over the press; and if, without injuring your proud spirit, I may express regret, I must lament the annoyance and expence to which you are subjected for that which did not originate with you, for you have simply echoed the general talk. As you have stood boldly forward on loyal principles, I feel confident that this law-suit will not damp your energies, that your own courage will bear you through, and that your cause will be supported by many a good friend, against the virulence of a party. I beg leave to offer, as one stud for a sevenfold shield against Whig assaults, my hearty subscription of five pounds; and I shall be glad to hear that there is a goodly increase before a week is over.

I am, Sir, your constant reader,

Ignotus.

JAMES PERRY, ESQ.

LATE PROPRIETOR AND EDITOR OF THE MORNING CHRONICLE.

It has been our painful duty, in common with our fellow journalists, to announce the death of a man, who, for a long period, had so distinguished a share in the political paper warfare of the country. "A generous Briton wars not with the dead." With Mr Perry, as a private individual, who could war? The keenness of invective was confined to his journal, for, in private life, he acknowledged no distinctions of party; and, so late as the year 1820, the writer of this article, whose political opinions were as much in opposition to those of Mr Perry as the two poles

are to each other, passed a happy day at his hospitable table in company with Lord Erskine, who is characterized as one of his earliest friends, and the most sensitive *politicometer* could not have indicated one hostile atom of influence. With Mr Perry's early history we have no concern, farther than to remark, that his own prosperous career gives a satisfactory confutation of many of the histrionic declamations which he poured forth against the order of things in this peculiar country. A man of liberal sentiments, and who has ample means for hospitality, always can command good company in London; and Mr Perry had the requisites and the result. He was admitted into the first society,—he was an enthusiastic, although not a very skilful critic in the fine arts, particularly in music, which occupied many an amusing corner in his journal. He was what is called a collector, and had acquired a very pretty library. These pursuits, and the company with which he associated, gave a gentlemanly tone to his newspaper, unless when, from ill health or occasional absence, too much was left to his hack subordinates.

But, in lamenting the death of an amiable man and a celebrated journalist, we have also to lament the death of the Morning Chronicle. The Morning Chronicle will, no doubt, still be continued, but no longer under his controul, and the controul of his responsibility and character. Scarcely, indeed, has he ceased to breathe, when the entrammelled subordinate, now the acting master, gives a taste of future progress. In the very article on the death of this able journalist, the journeyman scribe poisons the cup dedicated to his Memory with the following observation, which we will not so far dishonour the memory of Mr Perry, who was what is called a constitutional Whig, as to believe that *he* would have permitted to appear in *his* Morning Chronicle. Alluding to the period of the French Revolution, this *New* Chronicle observes,—"It was then that broke "forth that unfortunate schism in the Whig party, which "has had so fatal an effect on the character of the House "of Commons, and which, by destroying its efficiency as a "controul over the servants of the Crown, has thrown "down the main bulwark of our old constitution, *and left*, "*it is to be feared, to the people, no other hope but in themselves.*"—If this does not give a proper savour of unblushing radicalism, we are no judge of symptoms. But this only increases our regret for the loss of Mr Perry, who raised and sustained the character of his paper; for now, under

the influence of his long exertions, any low scribbler, for a while, may obtain currency for the vilest sentiments, and most reprehensible revolutionary doctrines.

(Addressed on the back thus)

"Mr ALEXANDER, Sentinel Office, Glasgow."

Mr Stuart having found it necessary to examine the writings referred to in the indictment, as well as some others in the hand-writing of Sir Alexander Boswell, the following petition was presented to the Court:

Unto the Right Honourable the Lord Justice General, the Lord Justice Clerk, and Lords Commissioners of Justiciary, the PETITION of JAMES STUART, Esq. younger of Dunearn, Clerk to the Signet, Humbly sheweth,

That the petitioner stands indicted to stand trial at the instance of his Majesty's Advocate, on Monday, the 10th of June, for the alleged crime of having murdered the late Sir Alexander Boswell.

That there are certain writings which are necessary for the petitioner's defence, but which, at present, are in the hands of third parties.

That the petitioner has no reason to think that these persons have any objections to deliver up these writings, but he understands that they rather wish for judicial authority to do so.

That these writings are as follows, viz.

1. A process which subsisted some time ago before the Magistrates of Glasgow, between William Alexander and William Murray Borthwick, printers and proprietors of a newspaper called the Sentinel. In this process, Borthwick was the pursuer, and Alexander the defender; and its object was, to maintain, or to reinstate the former in the possession of the office and documents of the Sentinel, from which the latter wished to exclude him. The process, and more particularly, the interlocutors which it contains, are necessary, because the fact of the petitioner's having got some of the documents of the Sentinel from Borthwick is specially mentioned in the libel, and it is insinuated, if not alleged, that the petitioner obtained them irregularly. This process is at present, or lately was, in the hands of Messrs Linning and Niven, writers to the signet, Edinburgh.

2. Articles which were inserted in the Sentinel, and which the petitioner wishes to prove, were written and sent

there by the late Sir Alexander Boswell, Bart. and in each of which the petitioner is named or alluded to. The first of these, a letter, bearing to be dated Auchinleck, November 7, 1821, and subscribed Alexander Boswell;—the second article is entitled "Whig Song;" the third is a letter signed "Ignotus;" the fourth is a letter signed "Mark "Tod," which appeared in the 17th Number of that newspaper; the fifth is an article beginning, "The late Lieu- "tenant James Stuart," and appeared in the 20th Number; the sixth is an article consisting of three or four pieces of verse, entitled "Valentines," which also appeared in the 20th Number; and the seventh, a poem, entitled the "Bully's Lament," which appeared in the 25th Number.

These papers are at present, or were lately, in the hands of the Sheriff-depute of Edinburgh, having been taken possession of by him in a precognition relative to Borthwick's affair.

3. A letter written by Sir Alexander Boswell to Robert Maconochie, Esq. lately from India. This letter was written on or about the 24th of March 1822. It makes mention of the petitioner's name; and it relates directly to the unfortunate affair which has given rise to the ensuing trial. It is at present in the hands of James Balfour, Esq. of Whittinghame.

The petitioner is advised that the instant possession or inspection of all of these documents is absolutely necessary for his defence.

May it therefore please your Lordships, to grant warrant for letters of first and second diligence against the saids Messrs Linning and Niven, writers to the signet, Adam Duff, Esq. and James Balfour, Esq. and against all other havers of the said writings, for enforcing exhibition of the same, to be transmitted to the Clerk of Court, and to be made patent to the petitioner, and his counsel and agents, and that immediately; and to grant commission to the Sheriff-depute or substitute, or any of his Majesty's Justices of Peace of the bounds, to take the depositions of the said havers, and to cause mark the said writings as relative hereto, and to transmit the same to the Clerk of Court as aforesaid,—or otherwise to do in the premises as to your Lordships may seem meet.

According to Justice, &c.

(Signed) H. Cockburn.

To the preceding petition the following answers were given in on the part of the Lord Advocate:

ANSWERS for Sir William Rae of St Catherine's, Baronet, his Majesty's Advocate, to the Petition of James Stuart, Esq. Younger of Dunearn, Clerk to the Signet

This day (5th June 1822) the petition now to be answered was appointed to be answered by the respondent, or any of his deputes, and answers were ordained to be given in before ten o'clock to-morrow morning. By way of implementing that order, a copy of the petition was left at a quarter before five o'clock this evening, not with any of the respondent's acting deputes in the Court of Justiciary, but with a gentleman who is well known to have ceased acting in that capacity for some time past. The respondent knows not why this unusual course of proceeding was adopted, and he only mentions the circumstance as the cause why his answers have not been given in at an earlier hour; at half after eight in the evening the petition was intimated to one of the Advocate-deputes.

The object of this petition is to obtain a diligence for the recovery of certain papers, the immediate inspection of which is said to be of importance to the petitioner in preparing for his approaching trial.

The writings sought by the petitioner are divided into three classes.

The first set of writings are said to be comprised in a process which some time ago depended before the Magistrates of Glasgow, between William Alexander and William Murray Borthwick, said to have been printers and proprietors of a newspaper called the "Sentinel." This process is said to be in the hands of Messrs Linning and Niven, writers to the signet.

The respondent has no interest to oppose the granting of the diligence for the recovery of this process, but he cannot take upon him to say that Messrs Linning and Niven, who are the agents for Alexander, may not have good reasons for refusing the delivery of it to the petitioner.

The second class of papers specified in the petition are said to be 'Articles which were inserted in the Sentinel, 'and which the petitioner wishes to prove were written and 'sent there by the late Sir Alexander Boswell, Bart., and 'in each of which the petitioner is named or alluded to.' Then follows a specification of seven documents, the first of

which is said to be a letter bearing to be dated Auchinleck, November 7, 1821, and subscribed "Alexander Boswell." Now, the petitioner knows perfectly well that this letter was never inserted in the Sentinel, and that the petitioner is neither named nor alluded to in it. Further, this letter, together with the 2d and 3d writings specified in this part of the petition, are all libelled on in the indictment against the petitioner, as productions to be made against him at his trial, and were ready to be produced to the petitioner according to the usual practice, sending to the Crown Agent. They are now in the clerk's hands, where the petitioner may have access to them. It was, therefore, unnecessary for him to ask for a diligence to recover them. The 5th, 6th, and 7th items of this class of writings are said to be in the hands of the Sheriff-depute of Edinburgh, having been taken possession of by him in a precognition relative to Borthwick's affair. The respondent can hardly conceive it possible that No. 7 should have so come into the hands of the Sheriff, seeing that the petitioner himself states that it appeared in the twenty-fifth number of the Sentinel, which was not published until a considerable time AFTER the investigation and precognition, in the course of which it is said to have come into the hands of the Sheriff depute of Edinburgh. But, in regard to all of these writings said to have been inserted in the Sentinel, and to have come into the hands of the Sheriff in the course of a precognition relative to Borthwick's affair, the respondent cannot give any consent, direct or implied, to the recovery of them out of the hands of the Sheriff. The respondent understands that these documents belong in property to the printer of the Sentinel, Mr Alexander, from whose premises, the respondent is informed, they were irregularly carried away, and who has instituted a criminal prosecution against some of the parties concerned in carrying them away. The respondent knows not whether they are of the hand-writing of Sir Alexander Boswell, yea or nay, but he has reason to believe that the most of them are not, and although he has no right or interest to resist the diligence sought, he does not wish to be supposed to give even a tacit consent to a proceeding which, under pretence of wishing to prove that certain documents are of a certain handwriting, is to give a party access to documents which otherwise he has no right to see, and on which ulterior proceedings may be founded.

The *third* class specified by the petitioner is "a letter from the late Sir Alexander Boswell to Robert Macono-

chie, Esq. lately from India." This letter is said to have been written on or about the 24th of March 1822, relative to the affair which led to the present trial, and to be at present in the hands of James Balfour, Esq. of Whittinghame. The respondent is ignorant of the contents of this letter, but if the petitioner thinks the inspection of it important to his defence, *the respondent* shall not object to his obtaining a diligence for that purpose, but at the same time he wishes it to be distinctly understood, that, in taking this course, he does not, directly or indirectly, admit the competency of the production of that letter in the course of the trial, or that the recovery of it from Mr Balfour will bring it competently into evidence, supposing it to be applicable.

In respect, whereof, &c.

(Signed) DUNN. M'NEILL, *A. D.*

The Court pronounced the following interlocutor on the 5th June 1822: 'The Lord Justice Clerk and Lords Commissioners of Justiciary, having considered this petition, with the answers thereto for his Majesty's Advocate, grants warrant for first and second diligence at the petitioner's instance against the persons named and designed in the foregoing petition, and all others possessed of the writings called for in said petition, for recovery thereof, excepting the first, second, and third articles specified at the sixth page of the said petition, which being libelled on in the indictment, are now lodged in the hands of the clerk of Court; and grants commission to Mr Andrew Murray, advocate, to take the depositions of the said havers at Edinburgh, and to be reported on or before Friday next; and ordains the said commissioner to transmit the said depositions and productions made therewith to the clerk of the High Court of Justiciary, sealed up, who is hereby authorized to open the same, and give inspection thereof to both parties."

The following is the examination which took place in consequence of the preceding interlocutor:

At Edinburgh, the 6th day of June 1822 years;

Compeared ÆNEAS MACBEAN, writer to the signet, who produced act and commission of the High Court of Justiciary, of date the 5th day of June in the same year, in the criminal prosecution at the instance of his Majesty's Advo-

cate against James Stuart, Esq. younger of Duncarn, granting commission to Andrew Murray, Esq advocate, to take the depositions and receive the exhibits of havers, as therein specified; which the said commissioner accepted of, and appointed William Sutherland Fraser as clerk, to whom he administered the oath *de fideli*.

Compeared Robert William Niven, writer to the signet, one of the partners of Messrs Linning and Niven, who being solemnly sworn, purged of malice and partial counsel, and examined as a haver, and being desired to produce a process which subsisted some time ago before the Magistrates of Glasgow between Alexander and Borthwick, referred to, being the first article in the act and commission, depones, and produces the said process, conform to inventory, with the exception of No. 6, "being copy dissolution of copartnership," which being necessary to be produced in the hands of the clerk of the Court of Justiciary, in the criminal prosecution presently depending against William Murray Borthwick, he declines to produce now, but will lodge in the hands of the clerk of the Court of Justiciary in the course of this day. All which is truth, &c.

Compeared Adam Duff, Esq. Sheriff-depute of the county of Edinburgh, who being solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter signed "Mark Tod," which appeared in the seventeenth number of the Sentinel newspaper; an article beginning "The late Lieutenant James Stuart," which appeared in the twentieth number of that newspaper; an article consisting of three or four pieces of verse, entitled "Valentines," which also appeared in the twentieth number; and a poem, entitled "The Bully's Lament," which appeared in the twenty-fifth number; or which several articles did at least appear in the said Sentinel newspaper, depones, That in the precognition that was taken before the deponent against William Murray Borthwick, different letters, writings, and other documents, were produced by Mr William Spalding, writer in Edinburgh, and delivered to the deponent: That on the 30th of March last, a petition in the name of the Lord Advocate was presented to the deponent, praying the deponent to deliver over, "or direct the clerk "of Court to deliver over to the Crown agent," the said writings, letters, and documents; and in consequence the said writings, letters, and documents were, according to the

deponent's directions, delivered over to the Crown agent, and were contained in four parcels or packets, with the relative inventories, and the Crown agent's receipt granted accordingly. And the deponent now produces the said petition, with the receipt marked thereon, which is marked by the deponent, commissioner, and clerk, as relative hereto. And farther depones, That he does not know whether the papers mentioned in the interrogatory were or were not delivered up to him by Mr Spalding, and afterwards delivered to the Crown agent, but the said papers are not in the deponent's possession: That he does not know where those papers are. All which is truth, &c.

Compeared Adam Rolland, Esq. Crown agent, who being solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter, signed "Mark Tod," which appeared in the seventeenth number of the Sentinel newspaper; an article beginning "The late Lieutenant James Stuart," which appeared in the twentieth number of that newspaper; an article consisting of three or four pieces of verse, entitled "Valentines," which also appeared in the twentieth number; and a poem, entitled "The Bully's Lament," which appeared in the twenty-fifth number, or which several articles did at least appear in the said Sentinel newspaper; depones, That he has not these papers, and that he does not know where they are. Depones, That he cannot say but that they might have been in his possession; but that to his knowledge he never saw them. And being interrogated how he explains this? depones, That he had a great many papers in his possession with a view to the trial of Borthwick at Glasgow, but he does not know whether the writings called for were among them or not. Being shown the petition, with the Sheriff's interlocutor, and the deponent's receipts thereon, and interrogated and desired to produce the four inventories therein referred to, depones, That he has not the inventories; but depones, That the whole of the before mentioned papers, together with the inventories, as he believes, were delivered over by him to Mr Anderson, Clerk of Justiciary, and to Robert William Niven, agent for Alexander, at whose instance the precognition mentioned in the act and commission was led; the papers founded on in Borthwick's trial were delivered over to Mr Anderson and the others to Mr Niven; and he adds, that it may be possible he may have returned some of the papers to Mr John Hope,

Deputy-Advocate, but as to this he does not recollect. All which is truth, &c.

Compeared again the before designed ROBERT WILLIAM NIVEN, who, being again solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter signed 'Mark Tod,' which appeared in the 17th number of the Sentinel newspaper, an article beginning 'The late Lieutenant James Stuart,' which appeared in the 20th number of that newspaper—an article consisting of three or four pieces of verse, entitled 'Valentines,' which also appeared in the 20th number; and a poem, entitled 'The Bully's Lament,' which appeared in the 25th number, or which several articles did at least appear in the said Sentinel newspaper; depones, That he did receive a box of papers, relative to Borthwick's trial, from Mr Anderson, Clerk of Justiciary; and he believes one of the papers called for, viz. that beginning with the words, 'The late Lieutenant James Stuart,' is among them, because he sees it mentioned in the inventory appended to Borthwick's indictment: That he has not looked through the said box of papers, and he does not know whether the other papers called for are among them or not: That he also got the precognition in Borthwick's case from Mr Rolland, Crown agent, and some accompanying papers; but he is not aware that the papers called for are among these. Depones, and declines to produce the papers he got from Mr Anderson, having borrowed them on his receipt, and because they are libelled upon as productions in the indictment against Borthwick; but that he will return them to the Clerk of Justiciary before seven o'clock this evening. Depones, That he does not know where the papers called for may be, otherwise than as above deponed to, and that he has not fraudulently put any of them away. Mr Niven adds, that, on going home, he will immediately look through the papers he received from Mr Rolland, along with the precognition; and if he finds any of the papers called for, he will transmit them to the commissioner before five o'clock this afternoon. All which is truth, &c.

The commissioner afterwards received a card from R. W. Niven, stating, that he had looked through the papers alluded to, but had not found any of the writings called for.

At Edinburgh, the 7th day of June 1822 years,

PRESENT,

Duncan M'Neill, Esq. Advocate, and
Adam Rolland, Esq. Agent for the Crown; And,
Henry Cockburn, Esq. Advocate, and
Æneas Macbean, Esq. Agent for the before mentioned James Stuart.

Compeared JAMES BALFOUR, Esq. of Whittinghame, who, being solemnly sworn and examined as a haver, and being requested to exhibit and produce a letter written by Sir Alexander Boswell to Robert Maconochie, Esq. lately from India, particularly specified in the act and commission, depones and exhibits the said letter, which, with its cover, is marked by the deponent, the commissioner, and clerk, as relative hereto. All which is truth, &c.

(Signed) J. BALFOUR.

JOHN HOPE, Esq. Advocate, having been present at the examination of Adam Rolland, Esq. which took place yesterday, and, having seen the act and commission, stated, that he would look through the papers in his possession, and, if he found any of the writings called for, he would transmit them to the commissioner. The commissioner afterwards received from him the letter signed "Mark Tod," under an envelope, on which it was stated to be the only paper required which was with him. And it is accordingly marked by the commissioner and clerk as relative hereto.

The following Defences were, on the 8th June, lodged for Mr Stuart:

DEFENCES for JAMES STUART, Esq. Younger of Dunearn, in the Criminal Indictment against him, at the instance of his Majesty's Advocate.

The pannel is a landed gentleman, and is infeft as such. His proper designation is "James Stuart, Esq. Younger of Dunearn."

He is not guilty of the crime with which he is charged.

Acting as he is, under professional advice, he cannot admit that he was the cause of the unfortunate death of Sir Alexander Boswell; but if it shall be proved that he was,

then he is satisfied that it will appear to the Court, and to the Jury, that his concern in that affair was excusable and unavoidable. He had received repeated and unprovoked insults from that gentleman. These appeared in the form of very offensive and unjustifiable articles, written and published by him in the Sentinel newspaper, consisting chiefly of an article entitled "Whig Song." Another article being a letter signed "Ignotus;" an article signed "Mark Tod;" and another article entitled "The late Lieutenant James Stuart." These publications charged the pannel with crimes and qualities which are intolerable to a gentleman; and they were aggravated, when taken in connection with certain similar articles which had appeared recently before in a newspaper called the Beacon, and which formed the groundwork of Sir Alexander's publications.

The pannel was guilty of no offence or irregularity in the mode in which he discovered that Sir Alexander Boswell was the author of these calumnies; but, on the contrary, obtained the evidence of his accession to them fairly from a person who he believed was entitled to give possession of the documents which proved it.

Sir Alexander himself was conscious that the affair in which he is said to have unfortunately fallen, had been rendered inevitable by his own conduct.

The charges of malice against that gentleman—of a determination to provoke him or any of the other lieges to fight with the pannel, and of absconding from justice, are all utterly denied.

The pannel has given in a list of witnesses, and a variety of documents, to prove his defence, by proving the circumstances on which he acted; and, however deeply he deplores the melancholy event which has occasioned this investigation, he is satisfied that, if he be tried by his peers, he cannot be found guilty of any crime.

(Signed) H. COCKBURN.

TRIAL.

Monday, June 10, 1822.

PRESENT,

The Right Hon. DAVID BOYLE, *Lord Justice Clerk.*

LORD HERMAND.	LORD GILLIES.
LORD SUCCOTH.	LORD PITMILLY.

(LORD MEADOWBANK did not attend.)

Counsel for the CROWN.

Sir WILLIAM RAE, Bart. *Lord Advocate.*
JAMES WEDDERBURN, Esq. *Solicitor-General.*
Mr DUNCAN M'NEILL, } *Advocates Depute.*
Mr ROBERT DUNDAS, }
ADAM ROLLAND, W. S. *Agent.*

Counsel for the PANNEL.

Mr FRANCIS JEFFREY.	Mr JOHN CUNINGHAME.
Mr JAMES MONCREIFF.	Mr THOMAS MAITLAND.
Mr JOHN A. MURRAY.	Mr WILLIAM GIBSON.
Mr HENRY COCKBURN.	

ÆNEAS M'BEAN, W. S. *Agent.*

THE Pannel took his place at the Bar, accompanied by his relatives the Earl of Moray, Mr Erskine of Cardross, and Captain Alexander Gordon of the Royal Navy, and by the Honourable Admiral Fleming, &c. &c.

The Prince Czartoriski, Lord Belhaven, the Honourable Henry Fox, and several other persons of distinction, sat on the Bench with the Judges.

The instance being called,—

The LORD JUSTICE-CLERK, as the presiding Judge, thus addressed the Pannel:

JAMES STUART, pay attention to the Indictment against you at the instance of his Majesty's Advocate, now to be read.

The Indictment or Libel was then read over by the Clerk, Mr Stuart standing up.

LORD JUSTICE-CLERK.—JAMES STUART, what do you say to this Indictment?—Are you Guilty or Not Guilty?

Mr STUART—My Lord, I am Not Guilty.

Mr Cockburn spoke as follows:

My Lord,—We do not intend to state any objection to the technical style of this indictment. It is drawn in rather a peculiar form, and contains statements and expressions which, we think, might have been spared, with some respect to private feeling, and no detriment to public justice. But still I am not aware that it is liable to any objections of a legal kind; and I must add, that, even though it were, these objections would require to be of no ordinary description, before the Gentleman at the Bar would allow us to state them, or to throw any obstacle in the way of a complete and full investigation of the truth, which has been his only and most earnest desire, ever since the unfortunate affair which made such inquiry necessary.

But though we have no objection to the technical relevancy of the libel, this is one of those occasions, on which it is the duty of the pannel * to avail himself of his undoubted privilege, of beginning the business of the day by such a statement of facts, as may enable the Court to judge of the bearing and relevancy of his defences. And we think it the more necessary to give this statement now, because this is a proceeding which involves considerations to the party far dearer to him than his life —and your Lordships know that there are a variety of accidents which, before he may have an opportunity of bringing them forward again, may make the trial on the part of the Public Prosecutor break down. And therefore it is, that he thinks it right to avail himself of this opportunity of stating his defences, in the same way as the law gives an opportunity to the Public Prosecutor of stating his charges. And though the statement which I am going to make at present must necessarily be addressed to the Court, I hope that I am guilty of no impropriety, if I mention to the gentlemen summoned as jurymen, that it is partly intended for them; and that, as no one of them can tell but that he may be one of the persons who may be obliged to try the case, they will indulge me by attending to the explanation which I am about to give.

This indictment sets out by stating, that Mr Stuart had conceived *malice and ill-will* against the late Sir Alexander Boswell, and that, under the operation of this passion, he had formed the unlawful *design* of challenging that gentleman. So far all is consistent. Because having malice against this

* A name given in Scotland to the prisoner.

particular individual, it is at least possible that he should have formed the unlawful design of challenging that man. But, by a species of reasoning of which we cannot well comprehend the meaning on this side of the bar, the indictment goes on further to state, that, having special malice against that gentleman, *and no malice against any body else*, he not only formed the design of challenging Sir Alexander Boswell, but *others of the liedges*. And then, apparently for the purpose of showing that he was maliciously going about, in search of causes of a quarrel, the statement is, that he repaired "to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents, connected with said newspaper, which were then in the premises in Nelson Street of Glasgow, occupied by Robert Alexander, editor and proprietor of the said newspaper, *and in the lawful possession and custody of the said Robert Alexander*; and the said William Murray Borthwick having been liberated from jail, *as arranged and concerted* by or with you, and having, on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried, away from the said premises in Nelson Street of Glasgow, sundry writings, the property, or in the lawful possession of the said Robert Alexander; and having brought, or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings: And having found, or *pretended* to have found among them, some writings holograph of the said Sir Alexander Boswell, you did *wickedly and maliciously* challenge the said Sir Alexander Boswell to fight a duel with you: and a time and place of meeting having been concerted, you did, upon Tuesday, the 26th day of March 1822, or upon one or other of the days of that month, or of February immediately preceding, or of April immediately following, upon the farm of Balbarton, in the shire of Fife, a little to the northward of the road from the village of Auchtertool to the burgh of Kirkaldy, and about three quarters of a mile or thereby distant from the said village of Auchtertool, in the said shire, *wickedly and maliciously* discharge at the said Sir Alexander Boswell a pistol loaded with ball, whereby the said Sir Alexander Boswell was mortally wounded, the ball having entered near the root of the neck on the right

side, and shattered the collar-bone, of which mortal wound the said Sir Alexander Boswell died in the course of the next day, and was thus murdered by you, the said James Stuart: And you, the said James Stuart, conscious of your guilt in the premises, *did abscond and flee from justice.*"

Now, all these collateral and extraneous statements, apart from the mere fact of the duel between the parties, are pointedly and most solemnly denied. I do not merely say they are statements which cannot be proved by legal evidence. They are statements for which there can be no moral evidence. If the light of Omniscience were let down on this affair, it would only show more distinctly, that the gentleman at the bar had *no* malice against Sir Alexander Boswell; that he did *not* seek the ground of a quarrel with him; that he was actuated by *no* conscious guilt; that he did *not* abscond, or flee from justice.

With respect to the other fact, by which the death of the unfortunate gentleman, now no more, was caused, if I were permitted to speak the sentiments of my client and friend at the bar, I would freely admit that that person met with his death at the hand of the prisoner. But I am not permitted to make here those candid and generous avowals which the prisoner would utter; and, therefore, acting as his counsel, though I do not anticipate that there can be the slightest doubt with respect to the fact on which this indictment mainly rests, we do not formally admit it. We call on the public prosecutor to prove it; and we do so chiefly in order that we may have the benefit of those explanatory circumstances of which otherwise we might be deprived. Accordingly, I beg that, in what I am going to state henceforth, what I say as to the catastrophe of this affair, may be always taken as an assumption, and not an admission. But, assuming the facts, this opens up the great question, Has the gentleman at the bar any legal apology for that effect of which he thus has been the cause?

I say that he has; and I shall proceed to state the circumstances on which we found the defence, that he is not guilty of the crime set forth in the libel * But I cannot enter on this statement without most earnestly begging the protection of the Court, and the forgiveness of the Jury, when I say, that I feel myself constrained by two great disadvantages.

In the first place, it is one of the unfortunate circumstances of this affair, that it is connected with topics of a public and party nature, which are most unfitted for the

* This is the technical term in Scotland for the indictment.

calm deliberations of a court of justice, and which can scarcely even be alluded to without exciting great prejudices and irritation. But I declare, that I act at present under the most severe restrictions on myself, not even by reference, to go into those matters one iota beyond what is absolutely necessary for the bare understanding of the case. And if, in the course of this discussion, I should appear to trench upon subjects which cannot, however slightly, be alluded to without almost dethroning reason, I pray that this may be ascribed to the necessity of our situation, and not to our having the remotest desire to excite a prejudice of any kind whatever.

The other consideration is of a far more painful and more delicate nature. It is another grievous misfortune in this case, and one which the gentleman at the bar feels more poignantly than any stranger can, that justice cannot be done to the living without seeming to encroach on those charities which are due to the dead. I wish I could avoid this topic too, and that we could pass through the business of the day, without casting even a shade of doubt on the memory of one whose unfortunate loss has occasioned this discussion. I am afraid that we cannot. But I trust that your Lordships will go along with me, and keep it always in remembrance, that, if we shall be obliged to charge that person with impropriety, we are most willing to ascribe it to indiscretion alone. And, I scarcely know whether I ought to say I am sorry or that I am glad, that there is a circumstance to which, in consistency with this explanation, his conduct may be attributed. Sir Alexander Boswell was known to be gifted—a fatal gift, when not combined with consummate prudence and the happiest temper—with great ironical powers; and I am sure I ask no more than what his best friends will allow, when I beg that every thing on his part may be ascribed to that propensity which all men have, to exert those peculiar powers on which they have staked either their reputation or their pleasure. I am certain that, in our conduct of this case, there is at least one restriction which we shall impose upon ourselves, which is, that every word which we say shall be strictly true. And surely he is no friend to the memory of a person deceased, who thinks that the lustre of that memory can be increased by concealing the full disclosures of truth.

Under these two difficulties, let us see what are the real facts. The first I shall state is one, for which I have the authority of all present, that the prisoner is a man of unimpeachable character, and in the station of a gentleman. No

man, who knows where the delicacies of this case lie, can fail to perceive the relevancy, in strict law, of what I now say; and accordingly, in every question where an appeal has been made to the laws of honour, the circumstances of the parties making the appeal, with reference to profession, with reference to rank, with reference to temper, have been laid down by the greatest judges as most material ingredients in the case.

Now, though, in this indictment, he is styled, we think somewhat unceremoniously, '*James Stuart*,' those who drew it might have known that he was directly connected by blood with some of the noblest and most ancient families in the land. He is a first cousin, once removed, of the noble family of Reay. He is very nearly connected—the precise degree is immaterial—with the noble families of Buchan, Melville, and Cardross, and several others. But I need say no more on this part of the case than that he is lineally descended from that great statesman whose history adorns the name and the house of Moray.* Failing the family of the last Earl, the father of the gentleman at the bar would have inherited the honours of that illustrious house; and, accordingly, I perceive at this moment that he is supported, in this his day of tribulation, by the present possessor of the honours and fortune of that family, who has chosen to forego the privileges of the peerage, which would have given him a place beside your Lordships, and with great manliness and good taste, has rather preferred to sit at the bar with his relative and his friend.

Nor is the personal character of the prisoner unworthy of these high and hereditary honours. This is a theme on which it is far better for the witnesses to speak than for me. But I must say, that if it fell to the lot of any person to be reduced to the necessity of proving his personal character, there is no man beyond these walls,—aye, there is no man within them—who could get a more beautiful character, from a greater number of disinterested and spontaneous witnesses, —all tendering their services, from the ranks of his political adversaries, than will be given to the gentleman at the bar. I am not going to bring forward the public thanks which he has got again and again from the public bodies whose business he has done. But the special point of his character to which I would chiefly call your attention is, that

* This, we believe, was an allusion to the Regent Murray.

he is distinguished by a total absence from those propensities from which quarrels like this in general arise. If he has any quality more distinguishing than another, it is that of peacefulness; and your Lordships will hear it mentioned in evidence, that on every occasion on which his assistance has been required, he has been the certain and successful peace-maker; and that, if he is now charged with imbruing his hands in another's blood, he has more than once been the man who has prevented similar calamities under similar circumstances.

Now, it is perhaps not unknown to some of your Lordships—it is sufficiently notorious to every body else,—that, in the beginning of January 1821, a newspaper was established in this city called the *Beacon*. With the general merits of that publication, either with respect to other subjects or other men, we have nothing whatever to do. But on a particular occasion, almost exactly a year ago, that paper contained a gross personal attack on Mr Stuart. The terms of that attack, the propriety of it, the meaning of it, I don't care about here; I rest on the mere fact, that he was attacked, and that that affair was settled between him and a person of the name of Stevenson. How these two settled it, is perfectly immaterial. But it was settled. Some persons I have heard doubt the judgment or good taste with which the matter was set at rest by Mr Stuart. With this I have nothing to do: I have only to say, that he had the highest authority for what he did. But let it be right or let it be wrong, settled it was. The fact is, it was terminated and adjusted, and both parties were bound over to keep the peace. This happened in the month of July 1821.

Now, after that affair was over, sure am I that no *stranger* had a right to take up that quarrel—that no man, not a party to the business, particularly if living at a distance, had a right to adopt it, and treat the gentleman at the bar with ignominy. Sure indeed am I, that, with regard to Mr Stuart, boasting, as he did, of the friendship, and walking every day arm in arm with the most respectable men, and in the confidence of every eminent character, nothing had occurred to make him a common butt, at which every person in the street was entitled to level his insult.

Nevertheless, there appeared in that paper a series of other attacks, which, for his own sake, I wish the deceased had never seen, because I shall show how *he adopted them*. But there did appear a series of attacks, couched in language which

is a disgrace to our age, and the use of which, on this and other occasions, has created unheard-of dissensions among the inhabitants of a place, who formerly were singularly united in all the bonds of citizenship. I am almost ashamed to mention the language of these attacks,—language for which, I confess to your Lordships, that, till I was professionally obliged to degrade myself, by seeing the work in which it appeared, I did not think there were to be found readers, or even printers, in this land. But I find that Mr Stuart's name was directly coupled with the word *dastard*—with that of *bully—sully poltroon—coward—despised.*

He reckoned these outrages a mere provocation to fight, *given on the part of the same persons with whom he had been bound over to keep the peace.* He therefore applied to the same Judge by whom this step had been taken, the Sheriff of Mid-Lothian; and without having recourse to measures of personal revenge at all, he asked for protection, as will be sworn to by that respectable Judge this day, by means of summary interdiction, or otherwise. But he was told that no redress in that form could be got—that, *because these provocations to fight appeared in a public newspaper*, as to which he was bound over not to retaliate, the Sheriff could do nothing—he would otherwise interfere with the liberty of the press!!! I am far from presuming to question the propriety of this learned person's judgment; but *what was its effect upon Mr Stuart?* He saw himself set up as a target, at which every base libeller might shoot, and when he applies to legal authority for protection, the answer is,—Protect yourself; I will give you none; at least none, which, from its being summary, is the only one of which the case admits.

Well, he submitted to this—to him most heavy judgment. For about a month or six weeks he submitted to slanders, which I would speak falsely if I said that he did not feel. He felt them to the quick, though no man but himself could have borne them with his patient courage.

However, that and other similar events brought the career of the *Beacon* to a close. And now another great branch of this history begins. That newspaper came to an end, and no continuation of it was set up in this place. A fair occasion was thus given for every human creature abstaining from touching Mr Stuart. Every man of good temper and good taste was thankful for this; and a common sentiment of satisfaction prevailed, in the belief that we had

once more returned to our ancient state of good neighbourhood and friendship.

But, in spite of this most tempting opportunity to have done with this affair, a newspaper, called the *Sentinel*, was set up in Glasgow,—in a different city, by different men, under different auspices—men with whom Mr Stuart had had no quarrel—no concern—no connection. Yet, in the very first number of this paper, all the previous calumnies against Mr Stuart are purposely and deliberately adopted. In that very first number, I find it said of a gentleman, who has in his veins the purest and noblest blood in the country, and who at that moment was admitted to the society of as large a circle of friends as any man can boast of,—that he had *dishonoured the blood and the name of his family*. I find him accused by name of *meanness*, and called a *heartless ruffian*; and there is applied, not indirectly, but broadly, and without evasion, that intolerable word *Coward*, an imputation which, when it can be borne quietly, the character of a British gentleman is gone.

Mr Stuart, though he had failed in the first application which he had made to the laws of his country, was not discouraged from making another. He was advised, not for the sake of paltry gain, but for the purpose of showing that he was resolved to resist that torrent of abuse of which we have seen the first fountain, to raise an action of damages; and, accordingly, *before another number of the paper* was published, he had a summons concluding for damages executed against the known editors of the paper. He gave in a condescendence (being the technical term for a specification) of the facts complained of; and in the answers to that condescendence, he was, plainly and openly, in a court of justice, twitted, *because he had not fought.** *The last article of this answer contains an appeal to men acquainted with the laws of honour*; and his civil rights were thus attempted to be prejudiced by a reference to those very laws, for observing which, he has the misfortune of now standing where he does!

He thus saw that even an appeal to the laws of his country was not to save him from renewed and aggravated insult. Because, even when humbly mendicating bare justice from a court of law, it was to be got only under those

* See Extract from the *Answers* for Robert Alexander, &c. in the *Appendix*.

odious allusions which human nature must be changed before it can bear.

This summons had not the effect of checking the continuation of these statements in the Sentinel. They went on; and I am now obliged to come a little nearer to the deceased, by stating, that they went on apparently with a keener spirit, and under an abler hand. Several articles appeared, of which the Jury will hereafter hear more particularly. Some of them are mentioned in the indictment. Who the author was, we shall speak of immediately. But there appeared among others an article, entitled "*Whig Song*;" a letter signed "*Ignotus*;" a paper beginning "*Lieutenant* "*James Stuart*;" and one having the name of "*Mark* "*Tod*." * There were several others besides, but what we have to do with at present are these four.

At the period I have come to, Mr Stuart did not know, *nor had he any suspicion*, who the author of these articles was. He and every body else was satisfied that they were not the productions of the printers, but that they came from some person who had not only that spirit which gives sarcasm its edge, but a few of those powers which give it its lustre. Accordingly, every one of his acquaintances saw how deeply they had sunk into his bosom, for *in every one of these articles the word coward is directly applied to him*. These arrows struck the mark for which they were intended, and they cleft that heart they were directed against, though the quiver from which they came had not been discovered.

If any thing could have added to the greatness of this injury, and to its irreparableness, it would be certain other facts which about this time came to the knowledge of Mr Stuart, and satisfied him, that this newspaper, set up as it was in a provincial town, was not entirely left to the support of provincial men, but that it received the countenance of *certain persons of higher station*—a fact which I state for no other purpose but that of showing, that greater injury was thereby done to Mr Stuart,—because he was so placed, that there were few houses he could go into without the chance of having his eyes fixed upon a paper in which the word Coward was applied to him.

At last, after suffering under those attacks for a considerable time, that unfortunate day, (as, in any view, I may call it,) arrived, in which the author of these calumnies was to be detected. The papers were found in the office of the Sen-

* The two first of these articles are annexed to the indictment; the other two will be found in the *Appendix*.

tinel; and it is made part of the direct charge against Mr Stuart in this indictment, though, whether by insinuation or not, we cannot very well understand, that he got these papers *improperly*. Now, as I know that prepossessions exist on this subject, I am most anxious that the real state of the fact should be understood, and seen so plainly, that he who runs may read. For this purpose, it is not necessary to go into many details. The leading facts can be explained at once, and the statement which I am now to give, I know the evidence will confirm.

Mr Stuart, one day last March, was walking in the adjoining hall, when a person came up to him, and *got himself introduced as the private country agent of William Murray Borthwick*, the editor or printer of the Sentinel. This gentleman Mr Stuart had never seen in his life before; scarcely ever since; and the statement made was just this:—'Borthwick is alarmed for his pecuniary safety; 'you have an action of damages against him; the Provost 'of Hamilton has two actions of damages, and others of the 'same kind are threatened. He wishes to do that which is 'always the right and duty of a printer to do, to serve him-'self by giving up the author.' The answer made to this proposal by Mr Stuart was the very same that was made by other two gentlemen to whom a similar intimation was conveyed. It was in substance this—'We are ready to go to 'Glasgow to save farther time, and if you give us the docu-'ments, we shall consider of your proposal. But we make 'no bargain; only, we want the author,—we don't concern 'ourselves with the paltry printer.'

Mr Stuart did not wish to go to Glasgow. The proposal indeed was, that one of the other two gentlemen should go. But they were prevented by accident, and he went himself, and he got the papers in question. But, in the *first* place, (for I have two facts to state in connection with this part of the business,) *he did not know* that Borthwick—assuming Borthwick to have had no right to give up the papers,—had no such right. In support of this, I have a witness against whom the prosecutor cannot object, I mean the Public Prosecutor himself. For what does he state in the indictment? That Mr Stuart went to Glasgow, and got the documents;—*but it is not ventured to be laid, that Mr Stuart knew that these documents were in the legal possession of Alexander.*

Therefore, on this point of the case, it appears that Mr

Stuart just did what any calumniated person would do, saying to the parties concerned, "I don't want your money, give me the author." He did what is usual in every case of stolen property, and which cannot be wrong in the stronger case of stolen character. Had he offered a reward of a thousand guineas for the author; nay, had he added, that if any person gave information, *no questions would be asked*, he would only have been doing what any man of spirit would have done. And what I would ask would have been said if he had *not* adopted this course of conduct; if he had hesitated about taking it? I know it well. I have the authority of all the past and after numbers of this paper, which leave no doubt what construction would have been put upon his conduct. "You *are* the *coward*, the *bully*, the *mean* man, the *heartless ruffian*, the *white feather*, the man *afraid of lead*, the man *afraid to draw a trigger*, the *poltroon* we called you; you talk of your character;—but you want a little money, it seems! because, when we put you in the way of getting honourable redress, you betake yourself to a civil action of damages, and let the author alone."

Mr Stuart, accordingly, took these papers, and it will be a strange circumstance if he should be thought wrong in doing so, when I am ready to poll the bar, from which I am confident that there is not one man out of twenty who would not, both professionally and personally, say, that it was not merely his right, but his duty, to take them.

But I have a great deal more to say before leaving this point; for when I plead, that our defence on this matter is, that *he did not know* that Borthwick was not entitled to give up these papers, I am supposing that, in point of fact, Borthwick was not so entitled. But I now say that, on legal grounds, *Borthwick was entitled to give them up.* The fact on this point can be very clearly and speedily told. Borthwick and Alexander were printers and proprietors of this paper; but at a particular time, and before Mr Stuart went for them, Alexander had proposed that Borthwick should go out of the concern. Borthwick agreed to this, but it was *conditionally*, and one of the conditions was, that a sum of money should be paid to him. On the faith of this future and prospective condition, which ought to have been fulfilled *within a limited time*, Borthwick very foolishly signed the dissolution of the firm, and put it in the hands of Alexander; but, of course, it was understood that it was not to be used *unless the conditions*

of the bargain were fulfilled. But Alexander, instead of waiting to fulfil the conditions, and pay his money, chose, most illegally and dishonestly, to publish the dissolution of the copartnery in the Gazette, and this in order to perform the trick of ousting his partner, and yet keeping his cash. On this Borthwick made an application to the Magistrates of Glasgow, praying that he might be reinstated in the office, unless his money was paid;—*and the Magistrates pronounced a judgment, that if the money were not paid within a certain time—eight days,—Borthwick should be entitled to resume possession of what was his own.* The eight days were allowed to elapse, and the money was *not* paid. Borthwick did not instantly run to take possession on this. He waited a considerable time further—about a fortnight, *till the interlocutor was eight days final*, and a sufficient time had passed for advocating to this Court,—and at last, seeing that no money was to be paid, —that there was to be no petition,—no advocation,—he went and resumed possession of his premises. *He was in possession for a whole day.* His associate in the office was Alexander, and no attempt was made to dislodge him.

To be sure Alexander, seeing that his partner, who was less disposed than himself to be libellous, was thus reinstated, had recourse to a *manœuvre* to get him out of the office. On an *old* caption, and for a debt *not* due, he caused him to be hurried to prison, and there he lay for eight days. Now, it was while he was thus in prison that the communication mentioned was made to Mr Stuart, and Alexander having thus crippled his partner, and defeated the interlocutor of the Magistrates by his illegal violence, was not idle in the meantime. Borthwick had in the office his own repositories, desks, and drawers. *All these it pleased Alexander to break open;* on all of *these he put new locks;* for the very purpose of making him sure that when, by the operation of the law, Borthwick should be relieved from prison, he should not get access without having again recourse to the Magistrates.

It was in this situation, when the legal rights of this man *had been defeated by a piece of illegal violence*, that Mr Stuart found him when he came to Glasgow. But observe,—I beg your Lordships will observe,—*Mr Stuart had no connection with Borthwick, directly or indirectly.* He had no connection with the story which I have now been telling you. He had nothing to do but to deal with Borthwick as the *apparent* proprietor, and to take the papers. He did not, as

the indictment says, liberate Borthwick from jail. Borthwick was liberated by payment of the L. 50 for which he had been imprisoned, but not one farthing came, directly or indirectly, from Mr Stuart. It was paid by Borthwick's private agent, as a part of his general business, and Mr Stuart had no more to do with it than the child unborn.

Therefore, the second remark which I have to make is, that, if the propriety of Mr Stuart's conduct depends on the fact of Borthwick's being entitled to do what he did, then his conduct was perfectly proper, for Borthwick was so entitled. He was the legal custodier and administrator of the company papers; and though he may not have been entitled to *give away* the company property, yet, as administrator, he was entitled to prevent the company and himself from being ruined by actions of damages. He was entitled to *exhibit* the papers for this purpose.

Mr Stuart thus got the papers innocently.—But from that day till this, he has felt the weight of the discoveries which he then made. For though I believe he would rather have given his life than have made the disclosure which he did, against a gentleman with whom he was somewhat related,—with whom he had never been but upon good terms,—whose talents he had always admired; nevertheless, the melancholy truth was discovered, that his half friend, *Sir Alexander Boswell, was the author of the worst calumnies against him.* He discovered enough to make himself satisfied; and I shall have no reliance on evidence henceforth, if the Jury be not satisfied that Sir Alexander was the author of that "*Whig Song*,"—of the letter signed "*Ignotus*," and of two or three other productions, in every one of which,—I do not say from malice,—I hope it was not from malice,—but from the sportiveness of an idle fancy, *he does apply the term Coward to the name of Mr Stuart*, without ever having received any provocation, or the smallest pretext for doing it.

For, observe, that these were statements made by Sir Alexander Boswell, against a gentleman who had formerly never written or spoken a word but in respect of him. I know it has been said, and I am sure there are persons here who must take the remark, that Sir Alexander's conduct had some extenuation from his having been the object of a previous publication in a different newspaper by Mr Stuart. I am most willing to let him have the benefit of that extenua-

tion, in so far as he can have it, for a sincere and honest *belief* on his part, that that was the case; but he was completely misinformed. If he ever got such information at all, *he was misinformed.* Mr Stuart is too much of a gentleman, and possesses too much mildness of character, to be guilty of anonymous publications against any individual. He never wrote one single word against, or about, Sir Alexander Boswell, nor had he, for two years before, written one syllable in the paper which I know has been referred to, except one slight discussion about the particular direction of a Ferry on the Frith of Forth.

So that Mr Stuart found himself here in very extraordinary circumstances indeed. He had now suffered such wrongs, as no gentleman in this country is ever affected to submit to, and he had seen all these insults adopted and aggravated in the Sentinel. Yet he found a letter from Sir Alexander Boswell, subscribing a sum of money to defend the Sentinel; in other words, to defend that very defamation for which the Sentinel was prosecuted; and then he found all the previous wrongs levelled at his head, on the authority of no base scribbler, but of a man, not quite his equal in family to be sure, but fully his equal in public station. What was—what could, Mr Stuart do after this? Was he to submit quietly? Was he not to speak? Was he to huddle up these papers, and go about the world with his diminished head marked with the word Coward? No—he did what, (with the exception of the Bench,) there is not a man in the kingdom who would not have done. He called in the advice of able and honourable men. In particular, the advice of one relative and friend, a nobleman, whose interference has proved a mighty blessing. The Earl of Rosslyn, on seeing these documents, saw at once that there was but one course to be followed. He left a message for Sir Alexander Boswell, stating that he wished to see him. After the lapse of several days (for Sir Alexander was then in London) he came to Edinburgh, and an interview took place between them. At that interview Sir Alexander was attended by another gentleman, whose judgment and amiableness of disposition made him a worthy confidant on such an occasion. Mr Douglas and the Earl of Rosslyn met with Sir Alexander Boswell,—*and I pray the Jury to observe what the terms were that were then offered to Sir Alexander.* Why, if Mr Stuart had been the bully and ruffian he was called, like a beast he would have rushed to the combat, and insisted that his wrongs should be positively and instantly wiped out with the blood of both, or one of them. There are men, and these amiable

and honourable men too, who have been unquestionably hurried into this course. But Mr Stuart, putting down, as he is thus proved most effectually to have done, the calumnies which had been launched against his temper and heart, was perfectly temperate and moderate. He who had suffered wrongs which made life intolerable, was yet willing to retain his life, and leave his antagonist the possession of his and of uninjured honour, by making two propositions, one of which it is my astonishment that Sir Alexander did not accept.

They had evidence of his accession to these calumnies, as being the author of them, and yet when they were exhibited, he was told, in the *first* place, that *if he would deny* that they were his, his simple assertion would be taken as conclusive against all evidence whatever; he had but to say, *They are not mine*, and Mr Stuart and he would have shaken hands together. But he did *not* say they were not his,—I wish he could have said so; but he was a gentleman, and he knew he could not say so truly. He distinctly *admitted the authorship* of that song, which was selected for the sake of simplicity, as the ground to be taken up. He admitted that song over and over again. He thus stood before a gentleman, who was his equal in every respect, confessing to him "I have called "you a coward." Yet another proposal was made to him— "Let us take it, Sir Alexander,—let us take it *as a mere bad joke.* "We are willing to take it in this light. Say but that you are "sorry for it; that it was a squib; and that you had no se- "rious intention of impeaching the honour or courage of Mr "Stuart." I am sure that was a proposition as mild as the greatest peace-maker could possibly have made, and it was a proposition to which the party *might have acceded without the slightest imputation on his honour.* For who can imagine that Sir Alexander would have been impaired in the estimation of society by acknowledging, on this occasion, that the whole *was an idle sarcasm? Yet that satisfaction he refused.* He said, I cannot submit to be catechized. I will make neither denial nor apology.

Now, was a meeting possibly to be avoided after this? On this matter we have the testimony of the Earl of Rosslyn, a person not accused of violence of disposition of any kind. We have more. We have the authority of Mr Douglas, who was chosen as his friend and peace-maker by Sir Alexander Boswell himself. These gentlemen will tell you, that they held a meeting to be absolutely inevitable. No legal, no moral, force could prevent that catastrophe. But there is a third witness as to the necessity of this, who renders it quite

unnecessary to speak of the conviction that arose in the minds of the mutual friends. *Sir Alexander himself* has left evidence behind him, which explains what *he* thought of this matter, and its character is unequivocal.

It seems that at the very time when he was writing these papers, his heart misgave him.—He knew that he was doing what was rash, and might give offence; and, accordingly, he left orders, as we shall prove, at the newspaper office, that they should immediately be destroyed. At the same time, having still those indestructible feelings of gentlemanlike accountability, which form the defence of Mr Stuart, he adopted the course that the Beacon had pretended to adopt before him, of leaving this additional direction at the office, that, if any one wished to come to him for what he had written, *demanding personal satisfaction*, his name should be given.

What inference are we to draw from this proceeding, except that, in concocting and publishing these lampoons, he was aware that he was levelling shafts which would strike some person who *must* call him to account?

It has been said that the calumny was not his. We shall endeavour, however, to prove that it was. Nay, that he even went the extraordinary length of concealing his penmanship, or of employing another person, to write that libellous production—the offensive song. I trust this is not true. But if it be, what fact can be more conclusive, than that he, a gentleman, should have written or composed that which he felt had to be concealed under a disguised or stranger hand?

When Sir Alexander first heard of the discovery of these papers, or rather when he came to Edinburgh after their discovery,—I mean, on the 23d of March, when he received a message from Lord Rosslyn, telling him that he wished to see him upon Monday—I pray you to observe what he did,—*I mean before he knew what the object was of Lord Rosslyn's message.* Lord Rosslyn merely said, that he wished to see him, without mentioning either why, or for whom. Yet at this very moment, on Sunday the 24th of March, he wrote a letter to a gentleman of great respectability, a friend of his in London, Mr Robert Maconochie, stating, that he had received a message from the Earl of Rosslyn.* He stated that he did not know what it was about, but he had no doubt it was *about these squibs*, and that whoever complained, he was determined to give a meeting.

* See *Appendix.*

And his conscience went a step farther. For he added, that he would do this, *even though the inquirer should be Mr James Stuart.* That is, before he knew, by any communication from Mr Stuart, that he was speaking of him, or thinking about him, he was aware that he had given Mr Stuart cause of offence, and accordingly prepared for that rencounter, which he knew to be inevitable, by asking Mr Maconochie to be his second. On the evening of the same day, or soon thereafter, *but, at any rate, before he knew what the message was to be about,* he prepared himself with another friend, that most excellent gentleman who attended him to the field; and to him he made the same statement, saying, he did not exactly know what article the message was to be about, but that he should not wonder if it were to be this, *and then recited the two offensive verses of the Whig Song.*

Not only so; but, at the time of the interview which I have mentioned, and on going to the field, he very distinctly stated, what virtually absolved Mr Stuart from all blame, by saying, in plain terms, that he held the meeting to be the consequence of his own fault, *and to be altogether inevitable.*

Nay, there was a particular time in the history of this transaction, in which your Lordships will find, that Mr Stuart and he were bound over to keep the peace; and when the officers were conveying him to the Sheriff's Office, he made use of expressions to them which I do not pretend to repeat. But the import of them was, that the officer might just as well allow him to escape, because no binding over could prevent a meeting; and that, if they did not settle this matter by risking life, *he and Mr Stuart could not live together in this island.*

I have, therefore, the two seconds, and not only these, to which great weight must be attached, but I have the opinion *of the deceased himself,* to which I attach conclusive weight, in evidence of the inevitableness of this meeting.

The affair being thus resolved upon, I need not state at any length its details, or rather I need not mention them at all. This case is, and must be, utterly devoid of those aggravations, which sometimes are to be found in personal quarrels; every thing was, and must have been, done fairly. We have acting for Mr Stuart, a nobleman, whose name, whose character, whose profession, and whose age, is itself a guarantee that nothing could be done, but with the most consummate prudence, gentleness, and propriety. We have for the other, Mr Douglas, who, though a novice—long may he continue so—in these affairs, has conducted himself

throughout, not only with the noblest fidelity to his friend, but with the most admirable candour and generosity towards his friend's antagonist. These gentlemen being present, is evidence conclusive to all the world, that, let what else be wrong, the duel was fairly fought.

I am sorry that I am obliged to add any thing about the views of the principal in approaching the fatal field. But I am bound to state, as I see it has been relied on in analogous cases, that Mr Stuart saw his antagonist making preparations, which he was bound to interpret as of the most deadly character. I am not insinuating that in this Sir Alexander was wrong. But the fact is, that he first proposed that the affair should be on the *Continent*, and in that singular and invaluable document in which he has expounded his views—the letter, which, as I mentioned before, he wrote to Mr Maconochie, he expressly says, that the reason why he wished to go to the Continent was, that he was about to do a deed, for which the operation of the British law might be inconvenient. "*If*," *says he*, "*I should be the successful shot, I should not like the after proceedings of our Courts of Justice.*" The resolution of fighting, and the consequence of thus fighting *fatally*, was still adhered to, though the intended scene of action was changed, and after it was resolved to fight *in England;* because it is proved that he resolved to fight there, in order solely to avoid the subsequent operations of justice. And when at last he agreed to fight in his native land, he did so with no altered intention in this respect; but because he was advised *by a legal friend* that *he would be safer in the hands of the Lord Advocate, than in those of an English Grand Jury.* *

Accordingly Mr Stuart took it so. He made his preparations *for death.* Every thing was done that a man certain of never seeing another sun could do. I am as certain as I am of my existence, that when he stepped from his carriage to the field, he firmly believed he was stepping to his grave.

An attempt, however, was made *even on the field* to settle this matter. Mr Douglas, with that good sense and good heart, which has really made it a pleasure to remark his conduct in this affair, asked *his own friend Sir Alexander*, immediately before the fatal preparations were made, if there was no possibility of yet settling it?—Sir Alexander knew how it might be settled. The two propositions of either denying the papers—though, to be sure, he could not well do

* See Letter to Mr Maconochie in the *Appendix*.

this, after having admitted them, --or the simple and honourable apology of the whole being a bad joke, were still open to him. But he shook his head, and said it was impossible.

So the parties met, and I need state no more. They fired together, and Sir Alexander fell. The contrast which was then exhibited in the conduct of this sulky poltroon—this bully--this ruffian—forms one of the most striking and honourable pictures I have ever seen in moral nature. Mr Stuart, instead of rushing impatiently to a premature combat, accommodated his antagonist, with admirable coolness, with every delay, and every request, that he made. He was willing to follow him to the Continent. He then agreed to meet in England. He agreed to give the delay of a fortnight. He agreed to meet in Scotland; and though it has been said there was hurry at last, that hurry, though it did not come from Sir Alexander Boswell, was occasioned by the natural and resistless conduct of a member of his family; who, hearing of his danger, gave that information, without blame to either party, certainly without blame to Mr Stuart, which made it impossible that farther time could be granted.

Now he who had borne all his intolerable injuries with a degree of courage far more heroic than that of braving present danger in the field; he, who, during his own personal danger, had behaved as if he had not been the novice in such matters that he was, no sooner found himself unexpectedly the survivor, and saw his antagonist at his feet, than he was instantly dissolved in all the tenderness of an infant. He was hurried away from the field. I believe, of himself, he was incapable of moving from the spot. He came to Edinburgh; but, even amidst the agitation of that moment, he did not forget what was due to his name. He left a message in the proper place, which we really think might have saved the public prosecutor from saying, that after this fatal day *he fled and absconded from justice.* Rather than have submitted to this sarcasm, for it is more like that than any thing else, Mr Stuart would have rushed instantly to jail, could he have foreseen the possibility that such a charge awaited him. He went instantly to a friend, Mr James Gibson, and amidst all his agitation, purely directed towards the unfortunate gentleman who had been wounded, he directed him *to leave word at the Crown-office, that whenever he was wanted, the public prosecutor might command his presence.* This was not a fleeing *from justice.* It was only a fleeing from those inconveniences to which

suspected innocence is necessarily subjected; and, accordingly, from that day to this, he has been not only anxious for his trial, but he has been using every exertion to bring it on, to *invite, to goad, to provoke*, the public prosecutor to proceed.

He went to London, and from thence to France; and we have the two gentlemen here this day, Mr Thomas Allan and Mr John Clerk, with whom he was when he first received the intelligence that Sir Alexander was no more. These gentlemen will explain to you if he received it in the spirit of a man who was merely glad that he was himself safe, or with the temper of one who had any feeling of malice towards the deceased. They will tell you that they never witnessed so natural and so generous a flood of sorrow, for the ties which he knew that he had broken, and for the life which he knew that he never could recall.

Out of these facts, the great question which your Lordships will this day have to ask is, if the catastrophe of this painful affair is to be alleviated by a conviction of murder against Mr Stuart? On the law of the case I have nothing to say, because it will come hereafter at a more proper time, and from an abler hand. But I may state in general, that I know that our law is rigid in its provisions for the preservation of life. I know also, that it is liberal in its presumptions of innocence, and in its sympathy with the infirmities of our nature; and that all its other maxims are levelled and absorbed in this great one, that no man *can* be guilty, whose mind is innocent. Is the mind of the pannel innocent of crime on this occasion? I have one fact more to state in illustration of that, and it is one which really forms a conclusive and impressive termination to all the apologies I have stated for Mr Stuart. Sir Alexander Boswell, in reference to this affair, consulted no less a person than a Supreme Criminal Judge,—a Judge of this Court,—that Judge, who, to his honour, is not here to-day; and, in the letter which he writes to the brother of that Judge, he says, that, "*on consulting him, his Lordship tells me, I may depend on you.*" That is, a Supreme Criminal Judge prepared Sir Alexander Boswell for the meeting, by furnishing him with a second. If any one imagines that I state this to the disparagement of that Judge he is mistaken.—I say it to his honour. It only proves that such was the inevitableness of the combat, that even a person best acquainted with the laws, and one professionally reared to reverence them, could not so far

pluck his human nature from his breast, as to say that it was wrong.

I know that, in the application of the law, it is sometimes thought due to the deceased, and to the interest of society, that offences of this kind should be visited with some punishment. But it is a sufficient check against the repetition of them, that the sufferer, before he engages in them, and ever afterwards, must be deeply punished in the quarrel, and in the event; and I, therefore, conclude by submitting, that, instead of adding to the sufferings of him who has already borne so much, and who, let this case terminate as it may, is doomed to suffer so much more, the only legal, the only moral, the only appropriate conclusion of this day's trial must be a persuasion, that he acted under the operation of a great moral necessity, and that a verdict of *Not Guilty* is the result, which will give most satisfaction both to the law and to all reasonable men.

Mr Solicitor-General.—The legal relevancy of the libel in this case is not disputed, and I am disposed to think that it is neither useful nor necessary, in the present stage of this matter, to enter into any argument on the fitness or relevancy of the topics intended to be urged in defence. If, in the course of leading proof on the part of the pannel, it should occur to the Public Prosecutor, that there is any objection to any part of the evidence that has been referred or to the relevancy, it will be time enough then for us to state.

In the present stage of the business, I shall only say that the pannel is entitled to the favourable benefit of the able and eloquent statement which has just fallen from his counsel.

Lord Hermand.—No objection has been stated by the pannel to the relevancy of the indictment; but it appears to me that it is incorrect, in as far as it charges the pannel with the intention of fighting a duel or duels, with others of the lieges than Sir Alexander Boswell. If we find the indictment relevant, it ought to be with a *salvo* in this particular.

Lord Gillies.—No objections have been stated by the prisoner to the relevancy of the indictment; but it is our duty, when it appears to us to admit of any doubt, to direct the attention of the Court to it. And there is one part of

the statement in this indictment of which I entertain considerable doubt, both as to its relevancy and its expediency. It is to me quite new and unprecedented, and I do not see how the Court can allow it to remain.

The charge states narratively, That the pannel at the bar formed the unlawful design of challenging the late Sir Alexander Boswell to fight a duel. So far the statement is correct. But then it adds,—and others of the lieges to fight a duel or duels. That appears to me to be altogether new, and I do not think it consistent with our duty to allow it to go to proof. I doubt the relevancy of such a charge as this,—that Mr Stuart had formed the unlawful design of challenging others of the lieges to fight duels,—and I thought it right to bring it under your Lordships' view.

Lord Pitmilly.—I agree with my brother in opinion, that this part of the charge is irrelevant.

Lord Succoth.—I think so too. We have nothing to do with any other but Sir Alexander Boswell, and therefore I think those general words should not be in this indictment.

Lord Hermand.—The same thing struck me. I would not have this indictment cast—my desire is that the trial should go on, and I believe that is the desire of more than myself. There is no averment here that Mr Stuart knew that Sir Alexander Boswell was the author of these libels.

Lord Justice-Clerk.—It certainly is our duty to notice if any thing irrelevant is stated in this indictment, whether it has been noticed by the counsel for the prisoner or not. And, therefore, there can be no impropriety in Lord Gillies' noticing what appeared to him to be irrelevant; and I confess, upon reading this indictment, it did appear to me that this part of it is not relevant. No doubt, it consists of mere narrative, but a great part of this indictment is made up of narrative, and if your Lordships were to sustain an objection on that ground, it would apply to the whole; but I must confess, as this charge is exhibited against the prisoner, charging him with the specific offence of the murder of Sir Alexander Boswell,—his having formed or not an intention of challenging others of the lieges to fight duels—is not pertinent to this issue; and, therefore, I agree with your Lordships, that these words should be struck out.

The following jurymen were then selected by the presiding Judge, and sworn to pass on the assize of the pannel:

Thomas Adinston of Carcant.
William Pagan of Linburn.
John Wauchope of Edmonstone.
Sir Alexander Charles Maitland Gibson of Cliftonhall, Bart.
Sir John Hope of Craighall, Bart.
James Watson of Saughton.
James Haig of Lochrin.
John Thomson of Burnhouse.
John Anderson of Whitburgh.
Sir James Dalyell of Binns, Bart.
James Dundas of Dundas.
David Brown, clothier in Edinburgh.
Robert Paterson, ironmonger there.
Thomas M'Ritchie, wine-merchant, Leith.
William Telfer, merchant, Leith.

EVIDENCE FOR THE CROWN.

The following witnesses were then adduced on the part of the prosecutor:

The Earl of Rosslyn, *sworn by the Lord Justice-Clerk.*

Lord Justice-Clerk.—My Lord, Persuaded that your Lordship must be acquainted with the privileges of the peerage, and considering that such a case as the present is new, and has never been brought under the deliberate judgment of the Court, and as the question arising upon it may depend upon another jurisdiction, the Court will leave it to your Lordship's discretion, what course you will think it fit to pursue in this case.

Lord Rosslyn.—It is fit, under those circumstances—particularly after the honour your Lordship has done me in thus addressing me—that I should state that I am not aware that any thing in my situation as a peer should alter or affect my duty in giving testimony as a witness, when duly called on to do so in a court of justice,—nor do I hold, as far as I understand, that any privilege belonging to that rank should prevent me from answering any questions which the Court

may think fit to put to any other witness standing in similar circumstances.

Lord Justice-Clerk.—Your Lordship is called in this question only as a witness; and though ordinary witnesses are bound to answer the questions put to them, they are under the protection of the Court, and thus secured from being subject to be tried for any matter as to which they may have given evidence, yet, as your Lordship, in a case of this nature, is not subject to the jurisdiction of this Court, you will judge what course you should follow.

Lord Rosslyn.—I understand I am under the protection of the Court the same as any other witness;—so far am I under the protection of the Court, that I cannot be called upon hereafter. I wish to explain, that I do not see any distinction that can be taken between a peer and any other person,—the protection of the law being granted to peers equally with other witnesses.

Mr Solicitor-General.—Are you acquainted with the pannel at the bar?

A. I am.

Q. Were you acquainted with the late Sir Alexander Boswell?

A. I was.

Q. In the course of the month of March last, were you charged with any message or communication by the pannel at the bar to Sir Alexander Boswell?

A. I was.

Q. Will you explain what was the nature of that message?

A. Upon the 25th of March last I saw Sir Alexander Boswell, in consequence of a note which I had written to him, requesting permission to see him; and I stated, that I waited on him at the desire of Mr Stuart. I stated to him that Mr Stuart had been in possession of certain papers, some of which appeared to be in Sir Alexander Boswell's hand-writing, and having been sent by the post, bore the post-mark of Mauchline, and the corresponding post-mark of reception at Glasgow: That those papers were addressed to the Editor of the Sentinel, and appeared to be originals (some of them) of papers published in that newspaper: That one of them particularly, a song, contained matter most offensive and most injurious to Mr Stuart's character, charging him, in more passages than one, direct-

ly with cowardice: That among those papers there was a letter purporting to be signed by Sir Alexander Boswell, to the Editor of the Sentinel, containing some praise of the paper, and ordering it to be sent to him: That the song, and other papers, letters, &c. reflecting on Mr Stuart, appeared to be in the same hand-writing with that letter which bore Sir Alexander's signature: That the similarity of the hand-writing, together with the circumstance of the post-mark of Mauchline, formed so strong a presumption that these papers had been sent by Sir Alexander, that Mr Stuart thought himself entitled to ask Sir Alexander whether he was or was not the author of them, or had sent them to the newspaper. I stated, at the same time, that if Sir Alexander could say that he was not the author of these papers, or had not sent them to the newspaper, such a denial on his part would be conclusive against any evidence.

Solicitor-General.—Q. Who were present at the time you gave the message you stated to Sir Alexander Boswell?

A. No person at first.

Q. What passed then?

A. Sir Alexander stated that it was a subject of great delicacy, and he desired to have a friend present, to which I acceded, as highly desirable. Sir Alexander left me, and returned with Mr Douglas as his friend. I then repeated to Sir Alexander, in Mr Douglas's presence, what I had before said to Sir Alexander, taking all possible care to impress on Mr Douglas's mind, that my question to Sir Alexander proceeded and was justified by, what I conceived to be, taking all the circumstances together, strong presumptive evidence that the papers complained of had come from Sir Alexander; and repeated, that Sir Alexander's denial should be held conclusive against any presumption.

Sir Alexander and Mr Douglas desired to confer together. I left them, and, when called back, found Mr Douglas alone. He stated to me, that he could not advise Sir Alexander Boswell to give any answer to the question,—that Mr Stuart was in possession of the facts, and the evidence upon which he relied, and he must thereupon exercise his own judgment. He stated, that if this unfortunate business was to proceed any farther, there were two conditions which Sir Alexander considered as indispensable,—one, that no meeting should take place for fourteen days, at least, because he had some family settlements to arrange which he believed would require his presence at kirk and market,—

the other, that any meeting which might take place should be on the Continent. On these conditions I had no difficulty in saying, that I thought them likely to be agreed to by Mr Stuart.

Mr Douglas then called in Sir Alexander, who stated, that he acknowledged the letter with his signature to be his writing,—and, with respect to the other papers, he declined to give any answer whatever. We then parted.

I stated that I had copies of the papers in my hands, and the letter, particularly of the song, and of the letter signed "Ignotus," and I believe I tendered them; but they certainly were not produced or looked at. Neither Mr Douglas nor Sir Alexander thought it necessary to require a sight of the papers. We parted, and I agreed to call upon Mr Douglas at his own house shortly after I saw Mr Stuart.

Mr Solicitor-General.—At this conference, at which were present Sir Alexander Boswell, Mr Douglas, and your Lordship, I understand your Lordship had only copies, and did not exhibit the originals?

A. I did not.

Q. And I understand farther, they were not asked for? What were the precise papers your Lordship was charged chiefly to insist upon?

A. There was a song, and a paper signed "*Ignotus.*" It was inclosed in a cover, besides the letter I first mentioned.

Q. These were the three papers, upon which your Lordship was authorized to ask an explanation from Sir Alexander?

A. They were.

Q. Was your Lordship charged to dwell particularly on any of those papers more than another,—and have the goodness to explain it to the Jury?

A. Certainly I considered the song as the paper of far the most importance, and upon which I chiefly, if not entirely, rested in stating the question—and I did so, because, in two passages, it contained a direct imputation of cowardice. However offensive any parts of the other papers might have been, their importance to Mr Stuart's character was greatly inferior, and, therefore, certainly not so much relied upon.

Q. Did your Lordship ever previously see the address of the paper signed Ignotus?

A. I did.

Q. Examine those papers?

A. That is the letter signed Ignotus. The second sheet contains other matters. That is the song.

Q. Did Mr Douglas say he would not advise Sir Alexander to answer as to the other papers?

A. He admitted the letter to be genuine, and said he would not say any thing as to the others.

Q. Did you then make any communication to Mr Stuart?

A. No farther than what I have stated.

Q. Will your Lordship now proceed to state what followed?

A. I saw Mr Stuart, and proceeded immediately to Mr Douglas, and stated, that I was grieved to find that no alternative was left to Mr Stuart.—That Mr Stuart agreed to both the conditions stated by Mr Douglas, viz. That there should be a delay of fourteen days,—and that the meeting should be on the Continent;—and it was settled between Mr Douglas and me, that, as soon as it should be convenient for Sir Alexander to be in London, after settling his business, I should then hear either from him or his friend.—I stated that I would advise Mr Stuart, who had urgent business in London, to proceed there without the least delay;—and that I would be there myself on or before the 6th of April. It was agreed that all subsequent arrangements, with respect to the time and place of meeting on the Continent, should be settled when we were assembled in London.—I did collect that Mr Douglas would not be able to go with Sir Alexander to England.—I asked Mr Douglas, before I parted with him, whether there would be no possibility of avoiding, by any means, the painful necessity of carrying this matter to extremities.—I asked, whether it were possible that Sir Alexander should treat the song as a very bad joke on his part, and one of which he was ashamed; declaring, at the same time, that he had no serious intention of reflecting on Mr Stuart's courage or character. The manner in which that proposition, so thrown out, was received, led me to understand that Mr Douglas had no hopes that Sir Alexander would say any such thing.

I left Mr Douglas to go to Newhaven, meaning to return to Fife immediately, in the conviction that every thing relating to this subject was for the present finally arranged. The boat had sailed; and, before I embarked, I was over-

taken by Mr Douglas, who stated to me that Sir Alexander had taken the advice of a legal friend, and that he thought it no longer necessary to go to the Continent, and that Sir Alexander was therefore desirous of having a meeting in Scotland. I objected to that as highly inconvenient, and embarrassing in some respects, and as contrary to the agreement entered into between us. I stated, that many circumstances made it appear to me very desirable that all future arrangements should be settled in London, as we had agreed, whether we should go to the Continent or not; but that I was still of opinion, that we ought to adhere to the arrangement of going to the Continent. I stated also, that, upon my advice, I was not even certain whether Mr Stuart might not be set out for London before any communication could be had with him, and that I certainly believed he would go that night.

Mr Douglas mentioned, he thought it better that the meeting should take place in Scotland. I objected to this, that still the same objection remained. It was a matter of some discretion, and required some discussion; and Mr Douglas returned to Edinburgh, saying, as we parted, that he hoped there would be no hanging about the case, and that the meeting might take place here. I stated that I would not go back to Edinburgh, because I was persuaded that my return with him, coupled with our meeting in the morning, might excite observation and suspicion. I then went home.

All this took place the same day. I came over about nine, and returned with the late boat between four and five.

Mr Solicitor-General.—Q. Were you again called upon next morning?

A. Yes.

Q. By whom?

A. By Mr James Brougham.

Q. In consequence of that visit from Mr James Brougham, what was done? What was the object of the visit?

A. (After a pause.) Of course, the Court cannot desire me to state what Mr James Brougham confidentially communicated to me. I am not at liberty to state what passed with Mr Brougham. It certainly cannot be evidence what he said to me. I will not repeat it without the direction of the Court. That was my reason for hesitating a little upon the question.

Lord Succoth.—Your Lordship may mention what Mr

Brougham or any one else said, so far as is necessary to make us understand your testimony as to the facts under investigation.

Mr Solicitor-General.—Q. What time in the morning did you receive this visit from Mr Brougham?

A. I cannot speak to a few minutes, but I should think it was from about a quarter to about half-past eight o'clock.

Q. Was it at Dysart?

A. At Dysart. From eight to half-past eight certainly it was. It was early in the morning. Mr Brougham stated to me that Sir Alexander Boswell and Mr Stuart had been bound over in the course of the night, by the Sheriff of Edinburgh, to keep the peace within the county and city; and that, in consequence of that proceeding, and the expedition which the matter now required, it had been settled during the night that Sir Alexander and Mr Stuart should meet at Auchtertool that morning, and he desired me to meet Mr Stuart at Auchtertool, which I did. I went there; and on the east side of the town I met Mr Douglas. We had some conversation, and we fixed upon a piece of ground in a field by the road side. Mr Stuart and Sir Alexander arrived in carriages, and got out at the place we had fixed upon.

Lord Justice-Clerk.—Q. At what time was this?

Lord Rosslyn.—A. I believe at ten o'clock.

Mr Solicitor-General.—Q. State in what parish Auchtertool is?

A. Auchtertool is a parish by itself, with a small town.

Q. And this field you fixed upon, is it in the parish of Auchtertool?

A. To tell the truth, I do not know. It is a little to the eastward of Auchtertool. I cannot state whether it is in the parish of Auchtertool, or in the adjoining parish.

Q. Am I to understand it is a little to the northward of the road?

A. The village is to the northward of the road, and the place is just alongside the road, to the eastward of Auchtertool.

Q. What next took place? Your Lordship will please go on with your statement.

A. The pistols were produced, and were loaded by Mr Douglas and myself, Mr Douglas sitting down, and I standing up. Mr Douglas received from me a measure of powder for each, and the balls, and rammed them down. There were but two pistols, of which Mr Douglas took one, and I took the

other. The ground was measured, (I cannot state exactly the time, whether before or after loading,) twelve very long paces between the stations. There was some trifling difference in the measurement, and we took the longest. The pistols were delivered to the parties respectively by Mr Douglas and by me; and it was agreed that they should fire together, by a word. Mr Douglas put it upon me to give that word; which I did accordingly. They both fired, and Sir Alexander fell.

Mr Solicitor-General.—Q. Will your Lordship go on to state what took place then on the field?

A. Every possible assistance was afforded to Sir Alexander, who was surrounded by the medical attendants, Mr Douglas, and myself, and I believe by Mr Brougham, who, during these transactions, had remained on a hill at a little distance, in charge of my horse. Mr Stuart had advanced with great anxiety towards Sir Alexander, but, from his situation, and the necessary treatment from those about him, he did not speak to him, nor do I think could have had any proper opportunity of doing so. When, upon examination of the wound, I was given to understand that it was a very serious one, I advised Mr Stuart to go away, which he did. All the others remained to give what assistance our strength might enable us in removing Sir Alexander to Balmuto, where it was judged advisable to carry him. No time was lost that could have been saved.

Before any thing took place upon the ground, Mr Stuart asked me if it was not fit that he should make a bow to Sir Alexander, expressive of a wish to be reconciled? I answered that I thought it perfectly right. And he advanced apparently for that purpose. Sir Alexander was then turned from him, and walking away, and I believe Mr Stuart had not the opportunity of doing so; but immediately after, my attention was drawn away from Mr Stuart to other objects.

I do not know if I have omitted any thing as far as narrative can go. If your Lordships, or counsel on the other side, put any questions to me, I shall answer them.

Mr Solicitor-General.—Q. You attended Sir Alexander to Balmuto?

A. I did.

Q. By whom was he accompanied?

A. By Mr Wood, Mr Liston, Dr Johnstone of Kirkcaldy, and myself. I bore a considerable hand in carrying him to Balmuto.

Q. And your Lordship left him there?

A. I left him there. All of us bore a very considerable share in carrying him, from the want of people there. And I left him there.

Q. At or about the time the ground was measured, or taken, as has been explained, did any conversation pass between your Lordship and Mr Douglas as to any possible reconciliation?

A. I should say nothing at all material—an expression of a wish, I believe, on the part of Mr Douglas first, and certainly on my own, that any mode could be found, by which it might be amicably settled. But it was a mere wish; certainly without any hope, on my part, that such arrangement could be made, and without any explicit proposal on either side. After what had passed between Mr Douglas and me, the day before, when I had thrown out what I did, and made the greatest possible advance without success or hope, I considered the case as desperate.

Cross-Examined by Mr JEFFREY.

Q. Before you went to Mr Douglas at all, or Sir Alexander, you had examined the papers upon which your message turned?

A. I had.

Q. Had you compared, yourself, the hand-writing of the signed letter, with the hand-writing of the other two papers?

A. I had, carefully.

Q. And your Lordship was then satisfied that they were of the same hand-writing, or so like as to raise a presumption or belief that they were of the same hand-writing?

A. I was satisfied that the letter signed *Ignotus*, and the direction of the song, were, as far as I could judge, of the same hand-writing with the signed letter.

Q. With respect to the hand-writing of the song?

A. With respect to the hand-writing of the song, at the first view, there appeared to be some difference. It was in a hand that seemed to me to be in some degree intentionally disguised. But, upon a strict examination of it, I was led to believe that it was written by the same person.

Q. Had your Lordship examined and at all compared the texture or marks of the paper upon which those documents were written?

A. Yes. The water-mark, the texture of the paper, and the size, were different. The signed letter was a quarto, the other folio. The water-mark appeared to be the same, "Val-

leyfield." All the three had the post-mark of Mauchline; and the corresponding mark of reception, "Glasgow." And the address appeared to me to be indisputably the same hand-writing.

Q. Then I understand it was your Lordship's opinion there was a sufficient case made out to justify the application to Sir Alexander Boswell?

A. Most undoubtedly.

Q. You gave that opinion to Mr Douglas before calling out Sir Alexander.

A. I did.—The presumption arising from combining all the circumstances left no doubt.

Q. Does you Lordship remain of the same opinion now?

A. I do.

Q. I think your Lordship mentioned you took copies of the letter and paper signed "*Ignotus*" to the meeting?

A. I had them in my hand.

Q. And mentioned to Mr Douglas you had them?

A. I did. He did not desire to see them.

Q. You stated they contained passages most offensive and injurious to Mr Stuart?

A. I did.

Q. And neither Sir Alexander nor Mr Douglas required exhibition of those papers?

A. Neither.

Lord Justice-Clerk.—Q. The song contained a direct imputation of cowardice in two parts?

A. The song did.

Mr Jeffrey.—Q. And both gentlemen declined to answer any question?

A. Sir Alexander declined to answer, except as to the signed letter,—and Mr Douglas said he could not advise Sir Alexander otherwise.

Q. May I ask your Lordship whether there was any thing in the *manner* of putting the question either to Sir Alexander individually in the first instance, or to both together afterwards, which, in your opinion as a man of the world, was such as to prevent Sir Alexander from answering, if, in the negative or not, he was the author of these writings?

A. I can safely say that there was nothing in my *manner* of putting the question, as far as I can judge, that could have given the least offence, or caused any difficulty in answering the question in the negative, if Sir Alexander had thought fit to do so; and I venture to say this the more confidently, that

I am quite certain I took the greatest possible pains in my power to guard against any such unfavourable impression or interpretation,—and I repeated the observation that we should consider Sir Alexander's word as completety decisive and conclusive of any question, and against any presumption that had been raised by our examination of the papers.

Q. Is your Lordship, as a man of honour and of the world, aware of any punctilio, or point of honour, that could have prevented a person, standing in Sir Alexander's situation, from answering the question in the negative, if he could have done so with truth?

A. I am not. And I would not, for one moment, have hesitated to do so for myself. I should not have had the least hesitation in so answering the question.

Q. If you had been the friend of any person to whom such a question had been put, and knew he was not the author, would you, in the circumstances, have advised him to declare he was not the author?

A. As the question was put, I would, without the least hesitation.

Q. Then may I ask your Lordship, whether the declinature of Sir Alexander and his friend to answer the question, gave you the impression that their doing so was equivalent to an acknowledgment?

A. The declinature of Sir Alexander and his friend to answer the question gave me such an impression.

Q. I observe you mentioned, that, at the subsequent meeting with Mr Douglas, at his own house, you suggested, whether the matter might not be got over by Sir Alexander saying, it had been a bad joke, and that he meant nothing offensive to Mr Stuart? Did Mr Douglas, on this, say, Sir Alexander was not the author of the song?

A. Not that I recollect.

Q. Then you supposed he was the author of the song?

A. Certainly.

Q. That of course was conveyed to Mr Douglas by the very question?

A. Certainly.

Q. If I understood you right, the first direct reference to a meeting between the parties came from Mr Douglas. I think you said, when an answer to the question was declined, Mr Douglas said, if the matter was to go on, Sir Alexander had two conditions to propose—one, that no meeting should take place for fourteen days; and another, that it should take

place on the Continent. Had you previously required such meeting, or was that the first time it was mentioned?

A. I had certainly not in direct terms required such meeting, but the necessary inevitable inference, from the question put, and the answer given to it, left the thing understood.

Q. But in point of fact Mr Douglas stated it first?

A. He stated it, because he stated, that, if a meeting was to take place, Sir Alexander had two conditions to propose.

Q. And that was the first and direct mention of a personal meeting?

A. That was the first mention of a personal meeting.

Q. I think you said Mr Stuart acquiesced in both conditions?

A. At once.

Q. I have two questions to ask your Lordship on the whole matter. From all that you saw of Mr Stuart's conduct in the matter, from the first commencement to the last, had your Lordship any reason to believe that he was actuated by hostility or vengeance to Sir Alexander Boswell, or merely by a desire to repair his injured honour?

A. From the whole of Mr Stuart's conduct throughout the proceeding, the impression made upon my mind was, that there was no feeling of personal ill-will or resentment against Sir Alexander Boswell, but a deep sense of the unavoidable necessity of vindicating his own honour, more especialy when it was assailed by a direct imputation of cowardice.

Q. Did you find him unreasonable, or tractable, and disposed to comply with all your suggestions?

A. Perfectly reasonable, and most ready to comply with my advice.

Q. Another question I wish to ask your Lordship is, whether, on the whole of the transaction, from first to last, Mr Stuart's bearing and deportment were such as to make your Lordship persuaded that he was a man of constancy and courage, or cowardly and timid?

A. I have no difficulty in stating, that Mr Stuart's conduct from first to last, from the commencement to the 26th of March, was cool, composed, and temperate, and such as might be expected from a man of constancy and courage.

Q. Your Lordship applies that to his conduct on the field, as well as preceding?

A. To every thing from beginning to end.

Q. Was there any conversation or consultation about what he ought to do in the discharge of this painful task, I mean as to taking aim?

A. Yes.—Mr Stuart said to me at the moment I gave him the pistol, "I think I ought not to take aim,"—in which I agreed. I desired him to present his side and not his front.

Q. Did your Lordship, accordingly, observe how he conducted himself? Had you your eye upon him, after giving the word?

A. Yes, certainly.

Q. Have the goodness to mention what the word was?

A. First, both parties were asked if they were ready. Then the word was given—as quick as the words could follow each other. "Present—Fire."

Q. Will your Lordship take the trouble to repeat the two words, in the *time* they were given, as nearly as you can?

(Here his Lordship repeated them in the time they had been given.)

Q. Before the word, "Present—Fire," was given, the pistol was not raised by Mr Stuart?

A. No.

Q. It was at the word "Present" he raised the pistol?

A. It was—He raised his arm and fired, almost instantaneously.

Mr Jeffrey.—There was no time, then, for an aim?

Q. You mentioned both parties fired? Did they both fire at once upon the word?

A. There was a small difference between the two. Sir Alexander's pistol was the last, but it came very close upon the other.

Q. Can you mark the time between the two, so as to give the Jury a notion of it?

A. It was so close as scarcely to be distinguished.

Q. Was it as close as this? (Here Mr Jeffrey gave two quick raps on the table.)

A. Yes, I should think it was.

Q. Did your Lordship observe whether Sir Alexander fired towards Mr Stuart?

A. I cannot say. I observed nothing to the contrary. In fact, I made no particular remark.

Q. May I ask your Lordship whether you had, at this time, any intimation, knowledge, or belief, that Sir Alexander did not intend to fire at Mr Stuart?

A. Certainly not. I had no such intimation, knowledge, or belief. Such an intimation given to me must necessarily at once have concluded the possibility of a meeting, and

would have amounted to an intimation that it was Sir Alexander's desire not to fight. Such an intimation given to me would necessarily have concluded all proceedings, and would have amounted, in my judgment, to a declaration on the part of Sir Alexander, that he did not mean to fight. It would have been quite impossible that I could have been a party to any proceedings after such an intimation.

Mr JEFFREY.—I have a question or two to put as to Mr Stuart's character. It is not quite *cross*, my doing so, but it will save trouble to my Lord Rosslyn to have them put now.

Q. You have known Mr Stuart for some time?

A. A good many years. I have known Mr Stuart for many years.

Q. Pretty intimately?

A. Yes, particularly of late.

Q. Had you occasion to see him frequently, both in public and private society?

A. Very frequently.

Q. May I ask your Lordship your general impression as to his character, for honour and general respectability, and particularly as to his temper and disposition, as being quarrelsome, and vindictive, or otherwise?

A. I have no difficulty in saying, that, in all my intercourse with him, I have never found a man less quarrelsome or less vindictive than Mr Stuart, or more generally respected.

Q. He was much occupied in improvements? *

A. Very much in general business, and in improving his estate.

Q. Have you occasion to know he was not given to field sports, which require the use of fire-arms?

A. I never saw or heard of him as so engaged.

Mr JOHN DOUGLAS, *sworn by Lord Hermand.*

Examined by Mr M'NEILL.—Were you acquainted with the late Sir Alexander Boswell?

A. Yes.

Q. Do you recollect, in March last, of attending him to a meeting with Lord Rosslyn?

A. Yes, I do.

Q. Tell us what passed, in the order of time. Do you remember on what particular day it was?

A. It was on the 25th March. When I went into the room where Lord Rosslyn was, he held in his hand some

* See *Appendix*, Nos. 1, 2, 3, and 4.

papers. Lord Rosslyn then mentioned that he had called this meeting on a particular business: That a friend of his had got or seen the originals of the papers,—of which he held copies in his hand, which contained obnoxious language on his friend's character. He mentioned his name—Mr James Stuart. One of the papers, in particular, was a Song. These papers were unsigned; but, amongst the documents, they had also found a signed letter of Sir Alexander Boswell's; and, on making a comparison between the signed letter, and the unsigned documents, they had no doubt they were of the same hand-writing. They had also the Mauchline post-mark on the signed, as well as on the unsigned documents, and the presumption was so strong that they were Sir Alexander's hand-writing, that this meeting had been called, to get him to confess or deny if they were his hand-writing: That if, upon his honour, he would say that they were not his, no further question would be asked,—or if he confessed that they were his, and would say he was sorry for it, and that he had meant nothing serious against Mr Stuart's character and honour, and made a proper apology, he would require nothing more. Sir Alexander then answered, that any document signed by his name he admitted to be his, but he would say nothing as to any other. His signature he would not deny,—anything unsigned, he begged not to be asked any questions about. I think that was all that passed at this meeting.

Q. Did all this pass continuously?

A. Yes.

Q. Did not Lord Rosslyn retire for some time?

A. Yes; he went into another room, and it was after he returned that Sir Alexander made that answer.

Q. Was that answer the result of your deliberation and advice?

A. It was.

Q. Then that interview was at an end?

A. That interview was then at an end. Lord Rosslyn then said he would see me where I might appoint. I fixed upon my own house.

Q. Did Lord Rosslyn come to your house?

A. He came to my house in about twenty minutes or half an hour thereafter.

Q. What passed between you and Lord Rosslyn?

A. His Lordship said, that he had seen Mr Stuart, and had stated to him what had passed; and as they were still both of opinion, that these documents were in Sir Alexander's

hand-writing, a challenge was inevitable; that he had received a message from Mr Stuart to Sir Alexander; that a meeting must take place; and this message I was to deliver to Sir Alexander.

Q. Did you communicate that message to Sir Alexander, and what was the time fixed for the meeting?

A. I did. Sir Alexander requested that it might not be sooner than a fortnight, as he had settlements to make, which would take some time to prepare, and would require his going to kirk and market.

Q. Did Lord Rosslyn assent to this?

A. He did. He said, he thought it was a very proper thing, under such circumstances, to ask a fortnight.

Q. Did any thing else take place?

A. Yes. Sir Alexander mentioned that he wished the meeting to be on the Continent; and to that Lord Rosslyn also assented.

Q. Were any farther arrangements made between you and Lord Rosslyn at that time?

A. Nothing farther. We had had communication before.

The Lord Justice-Clerk.—Was any thing said about going to London?

A. Lord Rosslyn might have said, that he was going to London, or something of that kind; and that the parties might go there, and proceed from thence to the Continent. I do not recollect. It did not make any impression on my mind.

Q. Lord Rosslyn then went away with the intention of going home?

A. I understood so.

Mr M'Neill.—Immediately, or shortly after Lord Rosslyn went away, did you see Sir Alexander Boswell?

A. Yes. Within five minutes Sir Alexander came into my house.

Q. Did you then communicate to him what had passed betwixt you and Lord Rosslyn?

A. I did. Sir Alexander said he was anxious to have seen me before I had seen Lord Rosslyn.

Q. Did he state the cause of that anxiety?

A. He did. He stated, that, since we parted, he had seen a legal friend, who had made him alter his opinion as to the duel taking place on the Continent; and that he now wished it might take place in Scotland. I told him, this was very unlucky, as we had settled it, and Lord Rosslyn had left Edinburgh; but that I would try to lay hold of Lord Ross-

lyn. I called on his Lordship immediately, but found he was gone. I immediately went after him to Newhaven, and there overtook him. I then communicated to Lord Rosslyn Sir Alexander's wishes as to the duel taking place in Scotland. Lord Rosslyn said, he had seen his friend, Mr Stuart, and had communicated to him that the meeting was fixed to take place on the Continent, and he objected to any change in that arrangement; and he declined returning with me to Edinburgh, as it might excite suspicion. However, I stated, that if he allowed me I would call upon Mr Stuart, and I would let him know if a change could take place. Lord Rosslyn said, I might call on Mr Stuart.

Q. Did you call upon him?

A. I did, and mentioned the change that had taken place in Sir Alexander's wishes, and likewise what Lord Rosslyn had said.

Q. What answer did Mr Stuart make?

A. Mr Stuart said, he had no objections to the meeting taking place in Scotland; but he rather wished that this might be arranged with Lord Rosslyn, than do it himself.

Q. Did any thing farther pass between you?

A. Nothing at that time.

Q. What was the next step you took in the matter?

A. I communicated what had passed to Sir Alexander, about 7 or 8 o'clock in the evening. He then said he had seen his man of business since the morning, and had altered his mind in regard to the time of the meeting, as any settlements he had to make might be done in two days instead of a fortnight.

Q. Did he propose any farther change in consequence?

A. He said he thought it was his duty to give every facility to the other party; and, as the business he had to do might be done in two days, he authorized me to wait on Mr Stuart. I went to Mr Stuart's house again, betwixt nine and ten in the evening, and found him at home. I told him I had come to mention this other change in Sir Alexander's wishes. Mr Stuart said, he thought it not right that he should have any communication with me on matters of that kind: That he had a friend in the house I might communicate with, and who would write to Lord Rosslyn, who was then on the other side of the water. Mr Stuart then introduced Mr James Brougham. I stated to Mr Brougham, that Sir Alexander wished the meeting to take place in two or three days,—say Thursday, when every thing would be ready for starting to some convenient place,—I mention-

ed Berwick-upon-Tweed, where they might choose either the English or Scots side of the border. I hoped he would write to Lord Rosslyn, and arrange accordingly, if Lord Rosslyn had no objections. Mr Brougham agreed to communicate with Lord Rosslyn, and let me know when he heard from him.

Q. What was the next step you took?

A. I had gone to a party at the Royal Hotel; about two o'clock in the morning the waiter came, and told me a person wanted to speak with me. I found Mr Brougham waiting down stairs.

Q. What communication did he make to you?

A. He told me he had been anxious to see me: that about 12 o'clock the parties had been bound over to keep the peace by the civil power; and he was of opinion that Mr Stuart and Sir Alexander Boswell, if he and I had no objections, should meet the following morning.

Q. What answer did you make?

A. I answered generally, that, under all the circumstances of the case, I thought so too, if Sir Alexander had no particular objections.

Q. Did you then go to Sir Alexander?

A. I then went to Sir Alexander's house; he had gone to bed. Under the circumstances I raised the family, and got Sir Alexander up. He stated he was also anxious to see me, and supposed I had come upon hearing that they had been bound over to keep the peace by the civil powers. I stated what had passed with Mr Brougham. He at once agreed with me in opinion, that he ought to meet the other party the following morning.

Q. Did you mention any particular place?

A. I went to Mr Brougham after that, and I told Mr Brougham, that Lord Rosslyn having been acting as Mr Stuart's friend, he should be present, and that, as we must leave the county, the best way would be to go to Fife, and that would be the easiest way to get at Lord Rosslyn,—and that it might be over as soon as possible. Mr Brougham agreed to send an express to Lord Rosslyn, telling him the change that had taken place; and Auchtertool was fixed upon as the nearest place where the parties should assemble.

Q. Were any farther arrangements made with Mr Brougham?

A. Nothing with regard to this,—none, except as to the pistols. I told Mr Brougham Sir Alexander intended to have sent to the country for his own next day, and that, as we

would be off before the shops were open, he would be unprovided. Mr Brougham said there was a pair belonging to Lord Rosslyn, to one of which Sir Alexander would be welcome if he wished.

Q. What time did you and Sir Alexander leave Edinburgh? Did you set out together?

A. After Sir Alexander made arrangements at home, we got a chaise; he sent for a medical man, and we set off a little before five.

Q. Was any medical person in the carriage with you and Sir Alexander?

A. Dr George Wood.

Q. You crossed the water?

A. We crossed at the Queensferry—breakfasted at North Queensferry—then went to Auchtertool. We were to be there at ten, and were there about ten minutes before ten.

Q. Did you see any other carriage arrive at Auchtertool?

A. We saw a carriage arrive about ten minutes after ten o'clock—Mr Stuart was in it.

Q. Did you find Lord Rosslyn at the village?

A. Not at the village. I went toward the road at the east end of the village, as I supposed Lord Rosslyn would come that way, and I met him about a quarter of a mile from the village.

Q. Did you then return?

A. I then told Lord Rosslyn we were ready at the village, that Sir Alexander was there, and that Mr Stuart had arrived—and that Lord Rosslyn had better not come into the village, as he might be known.

Q. Had you any conversation at that time, with Lord Rosslyn?

A. I agreed to go back to inform Mr Stuart that Lord Rosslyn was there. Lord Rosslyn was to wait beyond the toll-bar, till the parties came up.

Q. You went back?

A. Yes, and then I returned with my party; we all came up to the spot where Lord Rosslyn was waiting—the other party then came up.

Q. They then got out of the carriages?

A. Our carriage was first—and they drove on a little farther.—I wished to speak to Lord Rosslyn, and went up to him. He pointed out a spot as convenient for the meeting, and begged me to go to the top of the hill to look at it. I did so, and I agreed it was a very convenient place, very retired. After examining the ground and approving of it, I

waved my hand, and Sir Alexander came out of the carriage, and came toward the place where we were. I then went up to Sir Alexander, and told him this was the place we had fixed upon.

Q. Did any thing pass between you and Lord Rosslyn as to the possibility of accommodating matters?

A. I expressed my wish merely to Lord Rosslyn that the matter could be accommodated. He said he was afraid it could not. Nothing more passed.

Q. What was the next thing done?

A. Lord Rosslyn and I proceeded to examine the most convenient place in this dell—a sort of hollow dell—we fixed upon a spot, where the distance was measured off.

Q What became of the surgeons,—did they remain in sight?

A. Just at the entry to this place. I begged Dr Wood not to come forward. He requested to be present, and declined staying behind, saying, that he would wish to be near at hand. He came upon the ground, and I believe the other surgeon also came. After the ground was measured, twelve paces, the pistols were loaded with ball.

Q. What did the parties then do?

A. They took their positions.

Q. Lord Rosslyn and you retired?

A. On one side. We had arranged the signal. Lord Rosslyn gave the word of command. He wished me to do it, and I said he had better do it.

Q. Did Sir Alexander, before coming to the ground, state any thing to you, as to how he was to act?

A. Yes, he did.

Q. Where was that?

A. In the carriage, on the way from the North Ferry to the ground. He asked me, as a friend, what advice I would give him as to firing. I answered, he was the best judge of that, and that he should consult his own feelings. He said he had no ill-will at Mr Stuart,—he had no wish to put his life in jeopardy, though in an unhappy moment he had injured him,—he bore him no ill-will; and, therefore, it was his determination to fire in the air. I expressed my approbation of his resolution to do so.

Q. Having had this conversation with Sir Alexander, and seeing the parties ready, how did you direct your attention?

A. My eye was more upon Mr Stuart than upon Sir Alexander Boswell. I felt satisfied there was no great chance of Mr Stuart falling, Sir Alexander's determination having

been not to fire at Mr Stuart; therefore I kept my eye upon him.

Q. Did you observe Mr Stuart raise his pistol?

A. Yes, I did.

Q. Did he raise it steadily and deliberately?

A. He did it very steadily.

Q. Seeing the direction of the pistol, did you form any opinion as to his taking an aim?

A. I did not see the direction of the pistol. I saw it brought firmly up, and, of course, I then felt a little nervous.

Q. State what you observed?

A. They fired, and I then saw Sir Alexander fall.

Q. Did you hear his pistol go off?

A. Yes; I am pretty certain I did. They both went off, I heard the noise of two distinct shots.

Lord Justice-Clerk.—Were they distinct from each other?

A. They were distinct from each other.

Mr M'Neill.—Did you then go up to Sir Alexander?

A. I immediately ran up to Sir Alexander, and inquired if he was wounded.

Q. Did the surgeons come up?

A. They were quite at hand, and instantly with him.

Q. Did you observe Mr Stuart standing?

A. I do not think Mr Stuart left his place, at least not much from where he stood. I did not observe him much. I did not look much at him.

Q. Did you make any intimation to him?

A. After the medical persons had examined the wound, Dr Wood told me he was afraid it was mortal. I went towards Mr Stuart, and told him he had better go off directly.

Q. You have not mentioned the name of the medical gentleman who attended Mr Stuart?

A. I did not know it at the time, but afterwards.

Q. Did any person appear on the ground but the parties and seconds?

A. Yes; another person whom I afterwards understood to be a medical person, Dr Johnstone, and Mr James Brougham.

Q. When Sir Alexander's wound was probed and examined, did he make any remark to you?

A. He turned round to me, and said, he was very much

afraid he had not made his fire in the air appear so decided, as he could have wished.

Q. Was that the only observation of moment which he made?

A. That was the only observation.

Q. Was his wound dressed on the ground?

A. There was no dressing. He was then moved to Lord Balmuto's house. I borrowed Lord Rosslyn's horse to inform the family at Balmuto, to prepare for Sir Alexander's being brought.

Q. You assisted in carrying him?

A. On returning from Lord Balmuto's, I met them coming carrying him on a door. They had collected some people together, who assisted in carrying him there.

Q. You returned along with them?

A. Yes; along with Sir Alexander.

Q. Did you remain with him?

A. Yes; till the afternoon.

Q. Was the song that was talked of, the obnoxious article chiefly insisted on by Lord Rosslyn in the conferences with his Lordship?

A. Lord Rosslyn, holding the papers in his hands, said they were obnoxious, but the song in particular.

Q. Was the identity, or similarity of the handwriting, and of the post-marks, stated as the grounds of title for putting the question?

A. Certainly.

Q. Was the similarity of the handwriting chiefly insisted on?

A. He stated it, and also the post-mark.

Lord Advocate.—Q. Was any thing stated at that time from which you inferred that the different papers were not of the same handwriting?

A. Nothing.

Q. Did you see the originals at any time?

A. Never.

Q. If you had understood or supposed there was any difference in the handwriting, would you have thought it your duty to have acted differently?

(Mr Jeffrey objected to the question.)

Q. If any thing had been stated that led you to suppose there was a difference in the handwriting, would you have thought it your duty, to demand a sight of the originals?

A. Certainly.

Q. If you had seen those originals, and it appeared to you

that that song was not in the handwriting of Sir Alexander, would you have thought it justifiable to have allowed any questions with regard to that song to be put to Sir Alexander?

(Mr Jeffrey having risen to state objections to the question, and the Court having in consequence intimated that the witness should retire, Mr Stuart rose.)

Mr Stuart.—My Lord, the more complete this investigation is, the more agreeable it will be to me; and I have to request of my counsel not to object to any questions put by the Counsel of the Crown.

Mr Jeffrey.—It is not in every case I would be disposed to yield to any such request on the part of a client, but here I am disposed to allow the fullest possible investigation.

(The witness returned, and the question which had been objected to having been put,)

A. No, I do not think I would, if it was not of his handwriting. I think I would not have allowed him to answer the question.

Cross-examined by Mr Cuninghame.—I think you mentioned, that, in the carriage from the North Queensferry to Auchtertool, Sir Alexander Boswell said that he had injured Mr Stuart, and, on that account, that he would not fire at him—Do you know what he alluded to, in saying he had injured Mr Stuart?

A. He had written squibs against him.

Q. Did you understand one of those squibs to be the Whig Song on which Lord Rosslyn founded?

A. Perhaps it will be necessary for me to give a longer statement. When Sir Alexander first called upon me, it was on Sunday the 24th of March. He stated to me, he had arrived from London the night before about ten o'clock: That, upon his arrival, he had found a card from Lord Rosslyn. This card stated, that Lord Rosslyn had come to town very anxious to see him, and begged he would let him know when he arrived from London, as he had business of great consequence to mention to him. Sir Alexander then stated, that he anticipated from this, that he was going to receive a challenge, and he had no doubt it would be from Mr Stuart of Dunearn. He then mentioned, that he had, either since he came to Edinburgh, or before he came, learned there had been papers seized connected with the Glasgow Sentinel at Glasgow, and that he was afraid they might have got hold of some papers of his. And he then mentioned, that there was a song which he was afraid they might have

got hold of, and upon which he was also afraid a challenge might be founded. Sir Alexander repeated the song to me, and I recollect the part upon which he laid stress.

(A paper was handed to the witness, and he was asked, whether that was the song?)

A. Yes; and his object in coming to me was, to solicit me to act as his friend upon the occasion.

Q. You mentioned, that, at a certain period of the conference with Lord Rosslyn in the Waterloo Tavern, one of the conditions made by Sir Alexander as to the meeting with Mr Stuart was, that it should be on the Continent. Did he assign any reasons for having it on the Continent?

A. Yes. He considered, if any thing should happen—if they should meet, and if he should hit Mr Stuart, he should suffer much inconvenience from the law of this country.

Q. You mentioned, that, after Lord Rosslyn went to Newhaven, you overtook him, and proposed a change of place, to which his Lordship objected; at the same time, authorizing you, at your desire, to speak on the subject to Mr Stuart. Where did you then find Mr Stuart?

A. I called at his house, but found him from home; and as the servant said he would be at home soon, I walked about till I saw him in Charlotte Street.

Q. You mentioned Sir Alexander had seen a legal friend after your interview with Lord Rosslyn. Did you state to Mr Stuart any reason of Sir Alexander's for wishing to change the place of meeting from the Continent to Scotland?

A. Yes; I think I did;—that his legal friend told him it was quite unnecessary to go to the Continent, or even to England, as he was as safe here as anywhere, and rather more so; that the Lord Advocate was as safe as a Grand Jury; and, therefore, his legal friend had advised him not to go to the Continent.

Q. He said he had got this information from his legal friend?

A. My impression is, that this was the reason why he changed his wish as to the place of meeting.

Q. That, in the hands of a gentleman like the Lord Advocate, he would be more safe than in the hands of a Grand Jury?

A. Yes, as safe as in the hands of a Grand Jury.

Q. You mentioned that the parties were carried before the Sheriff late at night, and bound over to keep the peace

within the county. Do you know by whom that proceeding was suggested?

A. In answering this question, I am afraid I must go into some detail in my own vindication.

Mr JEFFREY.—There will be no occasion for mentioning names. We shall put the question in a general way.

Q. Was the proceeding of the Sheriff in consequence of information given him by the friends of the one party, or of the other?

A. By the friends of one of the parties.

Q. Of which party?

A. The friends of Sir Alexander.

Q. And you know this fact?

A. I have every reason to know the fact.

Mr JEFFREY.—We do not want to follow this further. We do not wish, in the slightest degree, to insinuate, that the notice to the Sheriff proceeded from Sir Alexander himself. We believe it was without his knowledge, and against his will and intention.

Mr CUNINGHAME.—Do you recollect any thing said at your meeting with Mr Brougham, of the disagreeable nature of the information given to the Sheriff which had led to the parties being bound over to keep the peace?

A. Yes, I do. There was a great deal of conversation between Mr Brougham and myself on the subject, and we were anxious, as the affair must go on, that it should be proceeded in without delay. We agreed, that the sooner it went on the better, in case of farther interference. I stated myself, that there would be a great deal of talk on the subject, in society,—that one party would accuse Mr Stuart's friends of having done this, and another party would attach blame to the friends of Sir Alexander Boswell.

Q. In the journey from Edinburgh to Queensferry, did any thing pass between Sir Alexander and you as to the meeting being indispensable?

A. Yes, I think there did, in presence of Dr Wood and myself. We three in the carriage talked of the subject, and as Dr Wood did not know the circumstances, there was a sort of explanation given of them to him; and we all agreed that, under all the circumstances of the case, Sir Alexander was in duty bound to receive Mr Stuart's fire, if he came there.

Q. Was the amount of the conversation, that Mr Stuart could not act otherwise than he did?

A. I do not know. We rather talked of what Sir Alexander was bound to do, I think.

Q. Have you any reason to believe whether it was or not Sir Alexander's intention at any period to make an apology to Mr Stuart?

A. After being with Lord Rosslyn, I spoke to Sir Alexander on the ground, and asked him if he would give way in any respect, and he told me, he did not see the least possibility of it.

Q. Did Sir Alexander explain to you, what he meant to do after firing in the air? Did he give you any notice of his farther intention?

A. No.

Q. Did he mean to make any apology then?

A. My opinion given to him was, that I had every hope the thing would stop there, as that would be the best apology he could make.

Lord Hermand—Q. Sir Alexander did not say he meant to apologize?

A. No, he did not. I have no doubt he had the same opinion I had.

Mr Cuninghame.—When it was arranged between Sir Alexander and you, that he was to fire in the air, was there any intimation of this given to Lord Rosslyn or to Mr Stuart?

A. None.

Q. Do you recollect the conversation between Dr Wood and you, near Auchtertool, on that subject?

A. Yes, I felt much responsibility in all the circumstances, and I asked Dr Wood as to giving a hint to the other party. I said I had no doubt this should not be done, and he agreed I was right. I also mentioned the subject to Sir Alexander himself, and he told me decidedly, not to give any hint whatever. He said it would be placing the other party in an awkward situation,—and we all three agreed that no notice should be given.

Q. After Sir Alexander took his station on the ground, did you give him any directions as to the mode of firing?

A. I went up to him to show him where he was to stand; and I said, Take care and make your fire in the air as distinct as possible; I hope there will be no difficulty then in bringing the matter to a conclusion, without any farther firing.

Q. Did you suggest the direction in which he should fire?

A. I said he should fire at the bank.

Q. Was that in the opposite direction from Mr Stuart?

A. Yes. It was in the direction where the seconds stood.

Q. Did you observe Mr Stuart receive the pistol from Lord Rosslyn?

A. I gave one to Lord Rosslyn, who, I suppose, gave it to Mr Stuart, and I gave the other to Sir Alexander.

Q. Did it strike you, from Mr Stuart's manner, whether he had been accustomed to use pistols?

A. I am not exactly a judge of that—as I said before, he presented his pistol steadily and with firmness.

Q. I beg to ask you in general, if Mr Stuart's conduct in the field on this occasion, appeared to you in every respect consistent with that of a man of honour and courage?

A. Certainly.

Q. Have you any reason to know, whether Sir Alexander ever wished his name concealed as the author of the articles in the Sentinel?

A. He stated to me, he did not wish it concealed.

Q. Did he add any thing on that occasion?

A. Yes, he seemed rather to feel that being an anonymous writer was not quite agreeable,—he did not seem to feel comfortable under it, and he said that, when he wrote in the Sentinel first, he sent a letter to the Editor, saying, that if any person came to ask who was the author of such and such articles that happened to have been written by him, if the inquirer said the object was a prosecution, the Editor was not to give up his name,—but if the person said it was to call the author to account for it, the Editor was then to inform his inquirer of Sir Alexander's name.

Q. Did Sir Alexander say, he had given any directions about manuscripts being burned, and that he was surprised they were preserved?

A. No; I do not think he did.

Q. I think you mentioned that Sir Alexander positively repeated two of the verses of the song on the Sunday morning. Did he afterwards, on the Monday after the interview with Lord Rosslyn, or at any time expressly say to you that he was the author of that song?

A. I decidedly understood, he was the author from all of the conversation I had with him.

Lord Justice-Clerk.—What was the direct instruction of Sir Alexander Boswell, communicated to my Lord Rosslyn as to those three writings?

A. My impression is, that I was authorized to state, that any thing signed by himself he would freely acknowledge; but, respecting any thing without his name, he begged not to be interrogated, and declined answering any question.

Lord Gillies.—Q. Was it with your advice or approbation that Sir Alexander adopted this resolution?

A. It was almost solely by my advice. He himself was rather inclined to acknowledge the authorship.

(In answer to a question from Lord Hermand, witness added,) And I thought it was the most prudent advice which I could give him, as he had made up his mind to make no apology.

Dr George Wood *sworn.*

Examined by Mr Solicitor-General.—You are a surgeon in Edinburgh?

A. I am.

Q. Were you called on, on the morning of 26th March, by Sir Alexander Boswell?

A. I was.

Q. What did Sir Alexander say to you?

A. That he was obliged to go out on an affair of honour.

Q. Did he request your professional attendance on that occasion?

A. Yes.

Q. Did you accompany him accordingly?

A. He left my house, and returned in a short time, accompanied with Mr Douglas in the same carriage.

Q. Whither did you, Sir Alexander, and Mr Douglas, proceed?

A. We proceeded to the Queensferry.

Q. And crossed it?

A. And crossed it.

Q. And then went where?

A. To Auchtertool, as I understand.

Q. Whom did you meet there?

A. No person whatever.

Q. Did you proceed to any distance from the village?

A. About three quarters of a mile, after remaining some time in the village.

Q. And then whom did you meet?

A. We passed one carriage on the road. It was before ours, and we passed it. I did not see who was in it.

Q. On the ground whom did you meet?

A. Lord Rosslyn and Mr Stuart. The carriage we were in stopped. Mr Douglas got out; and then Sir Alexander Boswell and I went on some hundred paces farther, and stopped at a gate. Sir Alexander and I got out. By this time Mr Douglas and Lord Rosslyn were a great way off down in a hollow, where I saw them. They seemed looking for a place for some particular purpose.

Q. Did you see Sir Alexander Boswell and Mr Stuart on that place?

A. I think not.

Q. Did you see them afterwards on the ground?

A. Yes, on the ground certainly.

Q. Then what did you do, when you saw them on the ground?

A. Lord Rosslyn addressed me, and said I had better remain where I was. I beckoned to Mr Liston to come to me, and Lord Rosslyn said I had better not go nearer. I said I was at too great a distance, and would much rather go nearer the scene.

Q. And you accordingly did so?

A His Lordship said I should do in that as I thought proper, and accordingly I did so.

Q. Were you in such a situation as to see the parties?

A. Certainly.

Q. Did you see them accordingly?

A. I did.

Q. Did you see or hear the discharge of pistols?

A. I did.

Q. Were you called up to the ground immediately?

A. I stated to Mr Liston, upon reaching the ground, that we ought to turn our backs and not see the firing; but that instantly on the shots taking place we should get up as fast as possible. On turning round after hearing the firing, I saw Sir Alexander Boswell on the ground. We went up instantly, and found him wounded.

Q. Did you hear one or two shots?

A. Two shots, very close one on another.

Q. You immediately ran up?

A. We immediately ran up, and found that the ball had entered about the middle of the right clavicle, which it had severely fractured.

Q. State what occurred?

A. Two pieces of bone were extracted on the spot; the first by myself, and the second by Mr Liston. Each of us endeavoured to lay hold of and extract other pieces of bone, but we found it impossible to do so. We then proceeded to examine the wound, for the purpose of discovering if the ball could be extracted, or where it was lodged. But we did not find it.

Q. Was it your opinion that it was a mortal wound?

A. At once, I was perfectly decided.

Q. Was Sir Alexander carried afterwards to Balmuto?

A. He was carried afterwards to Balmuto.

Q. And did you attend him to Balmuto?

A. I did.

Q. And afterwards?

A. Yes.

Q. And till he died?

A. Till he died.

Q. When did he die?

A. At half past three o'clock next day.

Q. And of that wound he died?

A. Certainly. It was the cause of his death.

Q. Did any conversation occur in the carriage, in the course of your journey from Edinburgh to Auchtertool, or from Auchtertool to the ground, relating to the subject of the meeting, and what was it?

A. Betwixt Edinburgh and Queensferry, to the best of my recollection, Sir Alexander, in the course of conversation, I think, mentioned, that, in all the circumstances of the case, Mr Stuart could do no less than call him out. I am satisfied that either he or Mr Douglas said so; but I think it was Sir Alexander, and the other, whoever it was, coincided in the opinion.

Q. Go on.

A. I have no recollection of any thing farther on that subject. But, I think, Sir Alexander expressed, in the course of the journey, that he was determined to fire in the air. And, certainly, after leaving Auchtertool, and before arriving at the ground, and when Mr Douglas was getting out of the carriage, Sir Alexander said, Now, gentlemen, I beg you to remark, that it is my final determination to fire in the air.

Q. Is that all the observation Sir Alexander made on the subject?

A. He made none farther that I remember.

Lord Hermand.—Was there any other person present after the wound was received?

A. Dr Johnstone—I forgot to mention him.

Lord Justice-Clerk.—Was there nobody but you and Mr Douglas present at the conversation you have just mentioned?

A. Nobody else.

Cross-examined by Mr Moncreiff.—You mentioned you turned your back.—Was it before the pistols were presented?

A. Yes; certainly.

ALEXANDER BOSWELL, W. S. sworn.

Examined by Mr M'NEILL.—You were acquainted with the late Sir Alexander Boswell?

A. Yes.

Q. For several years?

A. Yes.

Q. Do you recollect, about the month of March last, his desiring some alterations on his settlements, or new settlements to be prepared by you?

A. I marked he did so on the 25th March.

Q. He required you to make those speedily?

A. He expressed a desire I would specify the shortest time in which they could be made out.

Q. Do you know whether those settlements were executed before his death?

A. They were not executed.

Q. Do you know that he had been in London for some considerable time before?

A. Yes—he had been about a month from Edinburgh.

Q. When did he return? What day?

A. On Saturday the 23d of March, late in the evening.

Q. When did you see him last?

A. About 12 o'clock in the evening of Monday the 25th of March.

Q. You never saw him afterwards?

A. I saw him afterwards. That was the last time I saw him in Edinburgh.

Q. Where did you see him last?

A. At Balmuto, on the Wednesday immediately following.

Q. He was then wounded?

A. He was.

Q. Were you there when he died?

A. About an hour before he died.

Q. Was it in Balmuto House he died?

A. Yes.

Q. You are acquainted with his hand-writing?

A. I have seen a good deal of his hand-writing.

(Here the signed letter, with Sir Alexander's name, was shown to the witness.)

Q. Is that his hand-writing?

A. That is his hand-writing.

LORD JUSTICE-CLERK.—Q. What is its date?

A. 7th February.

Mr M'Neill.—We now show witness the song. Is that his hand-writing?

(It was handed to the witness.)

Witness.—It is not his hand-writing, to the best of my judgment.

Mr M'Neill.—Look at the address—is this his hand-writing?

A. That appears to have a very little resemblance in the *f's*, but I do not think it is his hand-writing. The first formation of the *f's* resembles his hand-writing.

Lord Succoth.—Do you think it is his hand-writing?

A. I should think it is not. I should say, it is not Sir Alexander's hand-writing.

Mr M'Neill.—You say you don't think it is the hand-writing of Sir Alexander; do you mean that it is not written by him at all?

A. I think it is not.

Q. It is not his penmanship?

A. It is quite different from his usual hand-writing. I have had letters written in all the different varieties of hand-writing of Sir Alexander, and I do not think I ever saw any that resembles that.

Q. You mentioned you were with Sir Alexander at twelve o'clock on Monday night. Were you with him when he was apprehended by the Sheriff officers, and bound over to keep the peace?

A. I was.

Q Did he say any thing which led you to think he knew, or did not know, how that took place?

A. He appeared very angry when he understood a Sheriff officer was in the house. He was agitated, and said he did not think any of the three acquainted with the circumstance would have used him so very ill as to have divulged it.

Lord Justice-Clerk.—I understood Mr Jeffrey to say, he disclaimed all idea of insinuating that the information to the public prosecutor, which led to the parties being bound over to keep the peace, originated from Sir Alexander Boswell.

Mr Jeffrey.—Most certainly.

Cross-examined by Mr Moncreiff.—Mr Boswell, look at that paper. It is the paper signed "Ignotus." And look at the address upon the other sheet. Are they Sir Alexander's hand-writing?

A. Yes, both of these appear to be Sir Alexander's hand-writing.

Q. Look at the address of the song and of "Ignotus;" compare them together, and say if you think them different?

A. I think I distinguish that difference between the two, that I would call the one Sir Alexander's hand-writing, and the other not. The one is more upright than the other, in particular "Sentinel Office." This to the "Sentinel Office, Glasgow," is in Sir Alexander's hand-writing.

(This shown to the Jury.)

JAMES WALKER sworn.

Examined by Mr M'NEILL.—You are tutor to Sir James Boswell?

A. Yes.

Q. You have been tutor in the late Sir Alexander's family for several years?

A. Yes.

Q. Are you well acquainted with Sir Alexander's hand-writing?

A. I have seen it frequently.

Q. Do you think that his? (Letter signed "Alexander Boswell.")

A. Yes, the letter is his.

Q. Look at this. (The Whig Song.)

A. It is extremely unlike any of his hand-writing I ever saw. I know his hand-writing.

Q. What is your opinion?

A. I think it is not his hand-writing.

Q. You taught some of the family to write, I believe; is it like the writing of any of the family?

A. No, it is not.

Q. Can you speak to the address also? Is it the same with the rest?

A. The address seems to be the same with the rest.

LORD JUSTICE-CLERK.—You say you have seen Sir Alexander's hand-writing; have you seen him write?

A. I have seen him at his writing-desk, but I do not think I have watched the pen. I think this is his hand-writing. (The paper signed "Ignotus.")

Cross-examined by Mr MURRAY.—Look at the address of that paper. Do you think that Sir Alexander's hand-writing?

A. Not so like it as the body of the paper.

Q. But do you think it is his hand-writing?

A. It has a good deal the character of his hand-writing.

Q. Look at that (Whig Song) and the Address.

(Here there was a considerable pause, during which the witness continued looking at the papers.)

Q. Do you swear that is not his hand-writing?

A. They are very much alike.

Q. Do you see any difference between them?

A. The word "Sentinel" in the one is not like the word "Sentinel" in the other.

Q. But look at the whole direction; and is there any word in the one different from some word in the other?

A. (A pause.) I do not observe any material difference.

Q. Now, Sir, open that song again, and look at it. Will you swear that is not Sir Alexander's hand-writing?

A. I have sworn.

Q. What difference do you see between that and his hand-writing in "Ignotus?"

A. The general character is unlike.

Q. Do you think it impossible that can be his hand-writing?

A. I cannot say.

Q. Sir Alexander wrote a very good hand in general,—a very clear distinct hand?

A. A very distinct hand.

Q. And made very clear strokes in general?

A. Yes; and the character of his hand was round.

William Home Lizars Sworn.

Examined by Mr M'Neill.

(The letter signed Alexander Boswell and the Whig Song were handed to the witness.)

Q. You have seen these before?

A. Yes.

Q. Do they appear to be the hand-writing of the same person?

A. When I first saw them I thought this was by a different hand from the hand which wrote that. When I first saw them I thought the song was a different person's writing; but, when I again saw them, with other documents, on Saturday, I was very much inclined to alter the opinion I had previously given. Toward the end of the song, on the third page, the similarity of the hand to the writing in the other paper is particularly striking. At the beginning there ap-

pears to have been an attempt to disguise the hand, but in a great degree overlooked towards the end. That struck me on Saturday. There are some particular letters in which the similarity is very striking. For instance, the *B* at Boswell, in the letter, has a very strong resemblance to *B* at Bills, on the second page of the song. The letter *S* at Sentinel, in the letter, and the letter *S* in the word *Sae* (so) at the beginning of the third page of the song, also resemble one another.

Witness.—A general remark I would make is, that, in the first page of the song, all the long letters (*y*'s and *g*'s) are generally turned up with a loop. But this propensity in the song, after you pass the first page, is greatly done away with, and many of these letters are turned up differently from the way in the first page; or, in other words, with a dash. Now, in Sir Alexander's ordinary hand, he invariably ends the words, having those long letters, with a dash; and when, in the song, he discovered that he had insensibly got into his usual way of writing, he has carefully gone over these dashed letters with the pen, and converted them into looped letters.

There were also other grounds for my change of opinion—I had a greater number of writings, said to have been written by Sir Alexander Boswell, to compare the song with;—and, if these were shown me, I would point out whole words in the song resembling words in these other writings.

Lord Advocate.—Q. Tell us where it was you saw these documents, and made these comparisons?

A. It was in the Justiciary Office, along with Mr Macbean.

Q. What were the documents with which you made the comparison?

A. There were these I have just mentioned, a Song, and a Letter to Mr Maconochie, subscribed by J. Balfour. In that letter there was the name Stuart, which bears a strong resemblance to the word Stuart in the song.

Mr M'Neill.—Q. And these were the only grounds for the alteration of your opinion?

A. Yes.

Q. On your first examination of them, you were of a different opinion, and thought the song in a different handwriting from the letter signed Alexander Boswell?

A. Yes.

Cross-examined by Mr Moncreiff.—Q. Did you see that paper signed *Ignotus*?

A. Yes, I think I did.

Q. Look if you find the word "Stuart," or any of the others there?

(Here a conversation took place, which prevented the question being answered.)

Q. Look at the long letter of two sheets?

(The letter, signed *Ignotus*, and the song were examined by the witness.)

Q. Is it the same hand-writing with the other?

A. I certainly think they are the very same. Those two are the same hand-writing, as far as I can judge. There is evidently a disguise of hand in the song.

Lord Hermand.—Q. You said there appeared to be a disguise at the commencement of the song, and not at the last part of it? What do you mean by disguise?

A. When a person writes in a disguised hand, and has to continue writing a long subject, he forgets himself, and ceases to disguise his hand. It is this absence of disguise which enables me to form an opinion.

William Spalding sworn.

Examined by Mr M'Neill.

Q. You remember, last March, going with Mr James Stuart to Glasgow?

A. Yes.

Q. Who accompanied you?

A. Mr Stuart and Mr Henderson.

Q. Who is Mr Henderson?

A. A writer in Hamilton.

Q. When did you arrange to go?

A. Mr Henderson and I did on the afternoon of the 9th of March.

Q. And how did Mr Stuart accompany you?

A. We called at Mr Stuart's house, and then, for the first time, I learned he was to accompany us.

Q. What was your object in going to Glasgow?

A. To liberate Mr Borthwick from prison.

Q. When did you arrive in Glasgow?

A. At eleven o'clock at night.

Q. What day of the week, do you remember?

A. Saturday.

Q. What house did you go to, and stop at?

A. The Tontine.

Q. Did you take any steps that night to liberate Mr Borthwick?

A. I believe Mr Henderson went to the jail, but did not get admittance. But I did not go.

Q. Borthwick was not liberated that night?

A. He was not.

Q. When was he liberated?

A. On Sunday night.

Q. Was it for debt that he was incarcerated?

A. Yes, alleged debt.

Q. What share did you take in the liberation of him?

A. I had no farther share in the liberation, than seeing Mr Henderson pay the money

Q. You are private agent for Mr Borthwick?

A. Yes.

Q. Was it intended or arranged by Mr Borthwick, that he should go back to the Sentinel Office next day, after being liberated?

A. In consequence of a warrant from the Magistrates of Glasgow reinstating him in his property, he was desirous of taking possession next morning of the Sentinel Office, under that warrant.

Mr M'Neill.—Q. You have not given a precise answer to what I asked. I want to know, whether, before liberating him, it was *arranged* that he should go back to the Sentinel Office?

A. I never saw him before, and I did not know he was to go back to the Sentinel Office.

Q. Did you know of the judgment in his favour at that time you talk of?

A. I knew of it before I went to Glasgow.

Q. But you did not know that, when he was to be liberated, he was to act upon that judgment?

A. I did not know till he was liberated.

Q. Do you know he went there?

A. He did proceed to the Sentinel Office next morning.

Q. I wish you to explain a little more. You say you are an agent for Mr Borthwick—that you went to Glasgow to liberate him, and yet you took no share in liberating him. If you went to Glasgow to liberate him, how did you go there without doing any thing to liberate him?

A. I never saw him till the money was paid to him.

Q. Is Mr Henderson agent for him?

A. He is agent at Hamilton.

Q. What was the object of your going to Glasgow?

A. I went along with Mr Henderson.

Lord Advocate.—How did Mr Henderson and you meet?

A. I was employed two months before on business with him.

Q. Tell us how he came to Edinburgh at this time?

A. He came upon the 5th of March to get a suspension and liberation for Mr Borthwick. He did not get the information necessary for this till the Friday. On the morning of the Saturday I prepared a bill of suspension and liberation, with which I proceeded to Mr Miller, Clerk of the Bills. But having learned that the bill could not pass, without an intimation of answers, for 24 hours, it was then resolved between Mr Henderson and myself, in order to prevent litigation and delay, to consign the money directly in the hands of the jailor at Glasgow, in order to procure his immediate liberation.

Q. What time was this?

A. On the 9th.

Q. Was there any reason assigned for liberating that man, at that moment, or that hour?

A. The debt was not due.

Q. That is not an answer to my question. Was any reason assigned for liberating him in that hurried way?

A. None.

Q. You say so. How came Mr Stuart into this matter, Sir? Explain that.

A. Upon the Saturday forenoon, about twelve o'clock, Mr Stuart and Mr Aytoun called at my house, and urged me to get a bill of suspension presented as quickly as possible.

Q. What reason did they give for urging this bill of suspension?

A. To get Borthwick liberated.

Q. What reason did they assign? Did they assign any reason?

A. The wish of the gentlemen was, I should proceed to Glasgow to liberate Borthwick.

Lord Justice-Clerk.—Q. Was any reason assigned for taking that step?

A. There was no reason given at that time.

Lord Advocate.—Q. Did you understand there was any reason why Mr Stuart interfered in the matter?

A. I did not. I knew from Mr Henderson that Mr Borthwick was to take possession of the Sentinel Office upon his liberation.

Q. You say you knew no reason why Mr Stuart interfered in the matter, but that Mr Henderson——

Mr Murray.—What the witness knows may be asked.

What Mr Henderson or any other said to him is no evidence at all.

Lord Advocate.—I am merely inquiring what Mr Stuart stated as his reason for his interference, or if he assigned any. Did Mr Stuart assign any reason for his interference, and what was it?

A. Mr Henderson stated to me, that Borthwick was prosecuted as a partner in the Sentinel Office, and wished to get free from the liability attending that connection. I introduced Mr Henderson to Mr Stuart. Mr Henderson, as Borthwick's agent, had expressed a wish to be introduced to Mr Stuart, to see if Mr Stuart would depart from an action of damages against Mr Borthwick, as the publisher of the Sentinel.

Q. What did you do on that occasion?

A. On the Thursday Mr Henderson and I were walking in the Parliament House. Mr Stuart passed; and I said to Mr Henderson, there is Mr Stuart; I will introduce him to you. I introduced Mr Henderson to Mr Stuart, and Mr Henderson told him that Mr Borthwick wished to be relieved from the action of damages at Mr Stuart's instance. Mr Stuart said, that would depend entirely upon Mr Borthwick himself,—that he was certain Mr Borthwick was not the person who wrote the libels against him in the Sentinel newspaper—and that, if Mr Borthwick knew and would tell him the names of any of the persons who wrote these articles, he would then consider whether he would desert the action against him or not.

Q. Was that all that passed then?

A. That was all that passed then.

Q. Then you say, that, upon Saturday, Mr Stuart and Mr Aytoun called, to urge you to get the bill of suspension and liberation ready? What did Mr Stuart say was his reason for wishing this?

A. He assigned no particular reason.

Q. Did Mr Aytoun, at that time, state any reason?

A. I cannot exactly recollect what passed.

Q. Was any thing said at that time of Mr Borthwick's taking possession of the Sentinel Office?

A. No. But it was quite understood Mr Henderson and I were to go to Glasgow to liberate Borthwick, by consigning the money, if bail would not be accepted.

Q. Did you contribute any part of that money?

A. None.

Q. What were you to do in Glasgow?

A. I went as Borthwick's agent.

Q. What were you to do there as Borthwick's agent?

A. Nothing particular.

Q. After going there, the proceedings you mentioned took place, and Borthwick was liberated, and you know he went and resumed possession of the Sentinel Office?

A. I know he left the Tontine to go to the Sentinel Office.

Q. Did he meet with Mr Stuart there?

A. Yes.

Q. In your presence?

A. Yes.

Q. Was that upon the Sunday night?

A. Upon the Sunday night.

Q. At what hour?

A. About eight o'clock.

Q. Was Mr Henderson present at that time?

A. He was.

Q. Was any other person present?

A. No other person. I am not very sure but Mr M'Grigor, writer in Glasgow, was present.

Q. Did any conversation take place then about Mr Borthwick going to the Sentinel Office in presence of Mr Stuart?

A. I think there was some conversation.

Q. Do you recollect the import of it?

A. It was at that time that Mr Henderson and myself informed Mr Borthwick he was entitled to take possession of the Sentinel Office at Glasgow.

Q. Was there any thing farther happened?

A. Mr Stuart left the room soon after that.

Q. Did any thing pass as to what Borthwick was to do on taking possession?

A. He was to take possession of the office and papers.

Q. You mean manuscripts?

A. Manuscripts.

Q. When was that arranged?

A. On the Sunday.

Q. When Mr Henderson, Borthwick, Mr Stuart, and you, were present?

A. I rather think Mr Stuart was present, but I cannot precisely say.

Q. Are you sure he was present?

A. I cannot positively say.

Q. Could you swear that he left the room before that took place?

A. I rather think he was present,—but I cannot be certain.

Q. What was Mr Borthwick to do with the manuscripts?

A. He was to bring them to me in Glasgow.

Q. Any particular part in Glasgow?

A. He was to put them into my hands in the Tontine.

Q. He was not to take all the manuscripts?

A. As many as would enable him to raise actions of relief against certain gentlemen of the county of Lanark who had established the paper.

Q. Did he take possession, or bring to you any manuscripts?

A. He brought the manuscripts to the Tontine where I was.

Q. When was that?

A. On the morning of Monday.

Q. Had he been in the Tontine that morning before?

A. He slept there.

Q. At what hour in the morning did he bring those manuscripts?

A. About eight o'clock. He did not bring them; they were sent by M'Leod and Robertson.

Q. Did he bring any of them himself?

A. He brought none himself.

Q. Did these persons bring the whole of the manuscripts?

A. The whole manuscripts of the Sentinel.

Q. And you suppose that they were the whole manuscripts of the Sentinel?

A. Yes.

Q. Did Robertson bring them into the room where you were?

A. He did.

Q. Into the parlour?

A. Yes.

Q. Did you, and Mr Stuart, and Mr Henderson, occupy all the same parlour?

A. Yes.

Q. Was Mr Stuart there at the time the manuscripts were brought?

A. He was.

Q. Before they were brought, had you any conversation with Mr Stuart that morning regarding them?

A. None.

Q. Had you any conversation with him on the subject of Borthwick at all?

A. None.

Q. When these manuscripts were brought to the room where Mr Stuart and you were, what was done with them?

A. They were opened up and examined by me, by Mr Stuart, and Mr Henderson.

Q. Any body else?

A. No.

Q. Did Borthwick come there soon after?

A. Yes.

Q. Did he assist you in examining the manuscripts?

A. He did not. That was done before he came in.

Q. Did you examine into the hand-writing of any of the manuscripts at that time?

A. Not before Mr Borthwick came. Mr Henderson knew the hand-writing of Sir Alexander. These were taken out and delivered to me, and he kept the rest.

Q. That was done in the parlour of the Tontine?

A. Yes.

Q. Did you examine the rest?

A. At that time I did not know the hand-writing of Sir Alexander Boswell.

Q. And it was not pointed out to you at that time?

A. No, it was not.

Mr M'Neill.—Q. Did you then see any letter of Sir Alexander Boswell's?

A. I saw a letter of Sir Alexander Boswell's.

Lord Justice-Clerk.—After seeing that letter, you compared it with other letters, did you?

A. I did.

Mr M'Neill.—Q. What was done with those manuscripts?—Did you take them away from Glasgow to Edinburgh?

A. Yes.

Q. That day?

A. Yes.

Lord Advocate.—Did Mr Stuart go with you?

A. He did.

Q. Do you know whether he had any other business at Glasgow?

A. I do not know.

Q. Look at those manuscripts; see whether those were in the number of the manuscripts which you took? (Here the song and the letter signed Ignotus were handed to the witness.)

A. Yes.

Q. Did you give the possession of those to Mr Stuart?

A. I did once.

Cross-Examined by Mr Cockburn.

Q. You say you introduced Mr Stuart to Mr Henderson, in the Outer-House?

A. I did.

Q. Was that introduction necessary, in consequence of Mr Stuart not being previously acquainted with Mr Henderson?

A. Mr Stuart and Mr Henderson were not acquainted before that.

Q. Did you hear Mr Henderson, in the name of Borthwick, offer any papers or information to Mr Stuart, or any information about those libels? Did Mr Henderson not say that Borthwick was anxious to give up the names of the authors, in order to get quit of the actions brought against him?

A. I do not recollect.

Q. Do you recollect of Mr Stuart soliciting any such information from Henderson?

A. I do not.

Q. Were you aware that Borthwick and Alexander had formerly been in trade together as printers of the Sentinel?

A. Yes.

Q. You said you were aware there had been a judgment of the Magistrates entitling Mr Borthwick to resume possession?

A. Yes, I was aware of that.

Q. Did you understand that Mr Borthwick—(I do not say the understanding was well founded)—had you any doubt Borthwick was entitled to resume possession?

A. I had not the least doubt.

Q. You had no doubt. Are you aware that Mr Henderson had any doubt upon that subject?

A. No, I am not aware that he had any doubt.

Q. That Mr Stuart had any doubt?

A. I cannot tell.

Q. From what you heard Mr Henderson say, did you understand Mr Stuart was impressed with the conviction that Borthwick was entitled to resume possession?

A. From what I heard Mr Henderson say, I think he had no doubt he was so entitled.

Q. Did Mr Henderson mention the action before the Magistrates of Glasgow?

A. He mentioned the action at Borthwick's instance, and the decision in his favour.

Q. You say he mentioned the action at Borthwick's instance and the decision—did you hear him tell Mr Stuart that the decision in that action had become final?

A. I am not sure that he did.

Q. You mentioned that Mr Borthwick was imprisoned

for a debt that you understood not to be due—Do you know that Mr Henderson said to Mr Stuart that that debt was not due?

A. I do.

Q. Had you any belief (I am not asking you if the belief was well founded) of the purpose for which he was imprisoned for a debt not due?

A. I had.

Q. Do you know why Mr Borthwick was imprisoned for a debt not due?

A. I did not know at the time, but I do now.

Q. And what was the reason?

A. To keep him out of the office.

Q. The L. 50 debt, you say, was paid by Mr Henderson?

A. By Mr Henderson.

Q Do you know that the L. 50, or any part of it, came, directly or indirectly, from Mr Stuart?

A. No part of it came, directly or indirectly, from Mr Stuart.

Q Where did it come from?

A. From Mr Henderson.

Lord Advocate.—How do you happen to know that, Sir?—How do you know it did not come from Mr Stuart?

A. I was present the whole time, and did not see him give it.

Mr M'Neill.—Do you know where Mr Henderson got it?

A. I do not.

(Lord Hermand here stopped Mr M'Neill.)

Mr Cockburn.—On your journey to Glasgow with Mr Stuart and Mr Henderson, was any mention made of Sir Alexander Boswell's name?

A. It was not mentioned.

Q. You went to Glasgow upon a Saturday night,—was any mention made of Sir Alexander Boswell's name in Mr Stuart's presence on the Sunday?

A. None.

Lord Hermand.—You said no mention was made of it till Monday?

A. Because it was on Monday we first saw his letter. No mention was made of it till we saw his letter. We did not know his name would be found there till we saw his letter.

Q. Did Mr Stuart say any thing upon that occasion?

A. No. He said he had not expected it.

Q. That was saying something.—Did he say any thing more?

A. Nothing more.

Mr Jeffrey.—We may have occasion for Mr Spalding again.

(The witness was re-inclosed.)

EVIDENCE IN SUPPORT OF THE DEFENCE.

(Mr William Henderson, writer in Hamilton, cited as a witness for the prosecution, was called by the Crown counsel, and placed in the witness' box. But after some consultation among the counsel for the prosecution, they stated they had closed their case, and the Lord Justice-Clerk told the witness he might withdraw. Upon which Mr Moncreiff, as counsel for the pannel, said he would begin the evidence for the defence with this witness, and, accordingly, desired the witness to remain.)

WILLIAM HENDERSON sworn.

Mr COCKBURN.—The Court and the Jury will take notice that the case is closed on the part of the prosecution, and that this is the first witness for the pannel at the bar.

Witness examined by Mr MONCREIFF.

Q. Are you a writer in Hamilton?

A. I am.

Q. Do you know William Murray Borthwick?

A. I do.

Q. Do you know he was the editor of a newspaper called the Clydesdale Journal?

A. I do.

Q. Have you been employed by him as his agent?

A. I have, since the month of December last. I had been his agent some time before—he had given me up—and then he began again to employ me in December.

Q. Did he put in your possession any papers for a particular purpose?

A. He did.

Q. About what time?

A. I think about the 29th of December, or thereabouts.

Q. For what purpose was it he gave you them?

A. To endeavour to get quit of certain actions of damages.

Q. When you got those papers, did you do any thing with the view of getting rid of the actions?

A. I did. I came to Edinburgh, and consulted a professional gentleman on the subject.

Q. About what time was that?

A. It was in the month of January; but I am not sure of the particular date.

Q. Had you any communication at all with Mr Stuart at that time?

A. None whatever.

Q. Did you know Mr Stuart at all?

A. I did not.

Q. Then when did you first know any thing of Mr Stuart?

A. It was about the beginning of the month of March.

Q. Had you come to Edinburgh at that time?

A. I had.

Q. Did you come on Mr Borthwick's business?

A. I did.

Q. What was it that brought you particularly at that period?

A. It was to obtain his liberation from jail. He had been imprisoned in Glasgow jail.

Q. Will you tell us how you came to expect to get him liberated? What was he imprisoned for?

A. For a debt by Mr Robertson, bookseller in Edinburgh, and by another bookseller there. Diligence had been raised for a large sum, I think L. 180, and it was restricted by a marking on the back to L. 50.

Q. How did you expect to get his liberation?

A. By a suspension and liberation, as I was satisfied the debt was not due.

Q. Before that imprisonment, were you at all employed about a process against the publishers of the Sentinel newspaper?

A. Yes, I was.

Q. Do you know there was an action brought by Mr Borthwick about the Sentinel, before the Magistrates of Glasgow?

A. I know there were two processes brought.

Q. But do you know there was one by Mr Borthwick for obtaining payment of bills?

A. Yes.

Q. Had it any other conclusion?

A. It had an alternative conclusion to obtain possession of the Sentinel Office.

Q. Do you know whether any judgment was pronounced on it?

A. Yes, I do know.

Q. What was the judgment?

A. It was ordering Alexander, that is, his partner, to make the payment concluded for within a certain space, six days I

believe, and failing his doing so within six days, authorizing Borthwick to take possession of the office.

Q. Have you seen that interlocutor?

A. Frequently.

(The process was handed to the witness, who read the prayer of the petition as follows:)

"May it therefore please your Honours to appoint a copy "of this petition, and of your deliverance, to be served "on the said Robert Alexander, defender, and him to "lodge answers thereto within a short space there- "after; and on resuming consideration hereof, with or "without answers, to decern and ordain the said de- "fender forthwith to deliver to the petitioner valid "bills, with sufficient security, for the said balance of "L. 60 Sterling, at nine and twelve months from the "said 27th of November; and failing his immediate- "ly doing so, find that the defender has not imple- "mented his part of said proffered agreement, and "that, consequently, the pursuer cannot be held to "have divested himself of his right, property, and in- "terest, in said concern, which, accordingly, allow him "to resume; or afford him such relief in the premises, "or to do otherwise farther as to your Honours shall "seem proper.

"According to Justice, &c.

"ALEX. URE."

Q. See if you can find the judgment?

(Witness read the judgment as follows:—"Having resum- "ed consideration of the case, Finds, That the word 'pur- "suer,' in the second line of the interlocutor of the 29th "of January, ought to have been 'defender,' and is, ac- "cordingly, correctly so written in the renewed order of "the 4th of this month, and corrects the said interlocu- "tor of the 29th of January accordingly; in respect the "defender has failed to implement the said renewed or- "der, ordains the defender, within six days from this "date, to deliver the bills with security to the pursuer, "concluded for in the petition, and, failing his doing so, "decerns in terms of the other alternative conclusion "thereof: Finally, remits to the auditor to tax the pur- "suer's expences.

"14*th February* 1822. WILLIAM SNELL."

Mr Moncreiff.—So the other alternative was, finding he was not divested, but might take possession?

Q. Does it consist with your knowledge that that interlocutor became final?

A. His agent in Glasgow told me so.

Q. But do you see any reclaiming petition?

A. There is none.

Q. Do you know that Mr Borthwick, in consequence of that judgment, took possession?

A. Yes, on the 1st March I received a letter from him, saying he had taken possession of it.

Q. When was he put in jail for the debt?

A. He was put in jail that night. He took possession in the morning, or in the course of the day, and was imprisoned on the morning of the 2d.

Q. How long was he in jail before you came to Edinburgh?

A. I came on the Tuesday following, I think on the 5th of March.

Q. You have explained how he was in jail,—and now we come to when you came to Edinburgh to get him liberated. To whom did you apply to get the suspension and liberation?

A. To Mr Spalding.

Q. Had you employed Mr Spalding before, as Mr Borthwick's agent?

A. I had.

Q. Did Mr Spalding prepare a bill of suspension and liberation?

A. He and I prepared it together.

Q. Was it presented?

A. It was.

Q. Did it go on to judgment?

A. Nothing farther was done on it. It was presented merely.

Q. Was it withdrawn?

A. It was withdrawn.

Q. Why?

A. Because it was understood from the Clerk of the Bills, that no order for his liberation could be granted without an answer.

Q. Then what did you resolve to do to effect his liberation?

A. We resolved to consign the money in the hands of the jailor, as the shortest way, under protest.

Q. Who was to consign the money?

A. I was to consign the money.

Q. From money of your own?

A. Yes. I was satisfied his claim was good, and I was to get from him an assignation of his claim of repetition. On coming to Edinburgh, I sent to Lanark to get a certificate whether or not Mr Robertson had reported a sale of Mr Borthwick's effects. I got also a statement of the debt for which Mr Borthwick had been imprisoned on the caption.

(The witness here was stating the particulars of the debt.)

Mr Moncreiff.—Q. You are giving us the particulars of the debt?

Witness.—A. One reason why I was satisfied the debt was not due was, by seeing sums had been marked by the trustee for Borthwick's creditors as paid to preferable creditors, of whom I was one, and I knew I had not been paid.

Q. You were satisfied the debt for which he was imprisoned was paid?

A. Yes.

Q. When were you first introduced to Mr Stuart?

A. On the 7th of March.

Q. Did you ask any body to introduce you to Mr Stuart?

A. I did.

Q. Whom?

A. Mr Spalding.

Q. Did you give any reason for it?

A. I did.

Q. Where was it you were introduced to him?

A. In the Outer-House.

Q. Did you give any reason for wishing to be introduced to Mr Stuart?

A. Mr Stuart had brought an action of damages against Mr Borthwick and other proprietors of the Sentinel, and Mr Borthwick wished to get quit of the consequences of that action—that was my reason for being introduced to Mr Stuart.

Q. When you were introduced to Mr Stuart, you mentioned the subject to him?

A. I mentioned to him the situation Borthwick was in at the time.

Q. You mentioned that he was in jail?

A. Yes; and how he had been put in jail.

Q. And did you explain the state of the process?

A. I did.

Q. Did you mention Borthwick had been imprisoned?

A. I did. It was proper to mention this; and I got evi-

dence that it was at the instigation of Alexander. I have evidence of that in my pocket at this moment.

Q. What day was this?

A. On Thursday the 7th of March.

Q. What did Mr Stuart say to your statement about getting the process settled?

A. He said he would make no promises to Mr Borthwick; that he was satisfied Mr Borthwick was not the person who had written what he called libels upon his character; that, on Borthwick's giving up the author, he would consider what he should do; and, that it would depend on Mr Borthwick himself whether he would give up his action.

Q. What reply did you make to that?

A. I said I had no doubt he would; for he had asked me frequently to be introduced to Mr Stuart, to inform him he was willing to do so.

Q. Then, did any thing more pass at this time?

A. I do not think any thing more passed at this time; I do not recollect.

Q. What did you do farther about the liberation of Mr Borthwick? When did you go to Glasgow?

A. On the Saturday following, the 9th of March.

Q. Did you see Mr Stuart again?

A. Not till the day I went.

Q. That was the Saturday. Now, you saw him that day, before going—Where?

A. In the house of Mr Spalding—he called there.

Q. Did any body call with him?

A. Yes; another gentleman.

Q. Who?

A. Mr Roger Aytoun.

Q. What passed at this meeting? What conversation had you then?

A. I do not recollect.

Q. Was any thing said about the suspension and liberation?

A. Mr Spalding and I were then preparing it. We did not then know it might not be passed without an answer.

Q. Did Mr Stuart leave you on that occasion then?

A. Yes, he did.

Q. Did you see him afterwards that day?

A. Yes.

Q. Where?

A. In his own house.

Q. Did you go to his own house?

A. Yes, with Mr Spalding.

Q. Did Mr Aytoun go with you, or was he there?

A. He went with us.

Q. Was any other person present?

A. Nobody else.

Q. Had you resolved by this time on withdrawing the bill of suspension and interdict?

A. Before going to Mr Stuart, we had resolved to go to Glasgow.

Q. Did Mr Stuart know this before you called?

A. I cannot answer that question.

Q. Did you tell him you were going immediately to Glasgow?

A. Yes.

Q. What passed about any body going with you?

A. He said he would accompany us.

Q. Was there any proposal for Mr Aytoun going?

A. It was proposed, but he said he could not get away.

Q. Was it said he would have gone if he could have got away?

A. He said so.

Q. And Mr Stuart agreed to go with you?

A. Yes.

Q. What was Mr Stuart's intention?

A. Borthwick previously told me, that if he resumed possession after being liberated, he would endeavour to lay hold of the manuscripts that were libels, as he thought he had a right to them,—not to deliver them up, but to show them, in order to get rid of the actions.

Q. Mr Stuart went along with you?

A. Yes, he did.

Q. Did you mention this to Mr Stuart?

A. Yes.—And then he went along with us, in order, if Borthwick got those papers, he might take the offer of seeing those manuscripts.

Q. And Mr Stuart went accordingly?

A. Yes.

Q. Before your going to Glasgow, had any thing been said about Sir Alexander Boswell?

A. Never—not a word.

Q. It was on the Saturday you went to Glasgow. Was any thing done that night?

A. I called at the jail that night, but did not get admittance. Then, the next morning, I had a conversation with Borthwick. I told him, Mr Spalding and I had come from Edinburgh, and I was to consign the money. He said, if he

was at liberty, he would resume possession of the office next morning at the usual hour.

Q. Do you know whether Borthwick had any keys in his possession belonging to the office?

A. No, farther than that he informed me he had.

Q. You did not see them?

A. No.

Q. Did you get him liberated on the Sunday?

A. Yes. When I called on him in the forenoon, he wished me to send a note to Hamilton to get down my clerk. When he was first imprisoned, he wished me to get my clerk to take charge of the office during his confinement. I declined to do that till he was liberated.

Q. And did he wish you to do that on being liberated?

A. He did, and I sent for my clerk.

Q. Had you occasion to apply to any body besides the jailor before you got the liberation?

A. I applied to Mr Alexander M'Grigor, writer in Glasgow.

Q. For what purpose?

A. To speak to Mr Reddie. He is the town-clerk, the assessor.

Q. Did you go to Mr Reddie?

A. I did not. Mr M'Grigor went.

Q. Was the liberation got?

A. The money was consigned, and Borthwick got his liberty.

Q. Where did Borthwick go to when he got out of jail?

A. He came to the Tontine where we were.

Q. Did he come into the room where you were?

A. Yes, he did.

Q. Who were all present?

A. There were Mr Stuart, Mr Spalding, myself, and Mr Borthwick.

Q. Did he state then what he intended to do?

A. Yes, he did. He said he would go to the office in the morning, resume possession of it, and endeavour to get possession of the manuscripts. It is proper to mention, that, on the day he took possession of the office first, he got some manuscripts, and sent them to me at Hamilton.

Q. That was on the 1st of March?

A. On the 1st of March, before I came to Edinburgh.

Q. You had had no communication with Mr Stuart at that time?

A. None whatever.

Q. Did any of these manuscripts show the name of Sir Alexander Boswell?

A. None.

Q. You mentioned, that, in the Tontine, on the Sunday evening, he told you he would go in the morning and get possession. Did you advise him, or did he ask you whether he had a right to take possession of them?

A. He asked, and I said he had a right, under the decision of the magistrates.

Q. Did Mr Spalding concur with you?

A. He did. There were papers taken away on the Sunday the week before.

Q. Did Alexander make any complaint about that?

A. None that I heard of.

Q. Was there no application to the magistrates about it?

A. None that I ever heard of.

Q. You say Mr Stuart was in the room. Was he in the room the whole time?

A. He went to bed, and left Mr Spalding and my clerk, who had come down.

Q. When you were considering this matter, did Mr Stuart give any instructions?

A. None that I heard of.

Q. Did Mr Stuart give Borthwick any instructions?

A. None that I heard of.

Q. Did Borthwick sleep there?

A. He did.

Q. In the morning did Borthwick go to the Sentinel Office, or did any thing occur to make you believe so?

A. He went to the Sentinel Office with my clerk, and a man of the name of Loudon Robertson, to be witnesses of what he did.

Q. Did he come back again?

A. A short time after he went away, about half an hour, Loudon Robertson came to the Tontine with papers. These papers, he said, were from Mr Borthwick. On looking at them they turned out to be manuscripts of the newspaper.

Q. Did Borthwick come back himself?

A. He did. He said he was prevented from inspecting the manuscripts in the office by the violence of David Alexander, brother of his partner.

Q. Did he bring any more papers with him?

A. I believe he did.

Q. Were those papers examined in the Tontine?

A. They were examined in the Tontine. And Borth-

wick wished to send them back, after taking out those manuscripts he wanted, when my clerk came in, and said it was needless, as he had been turned out by the violence of David Alexander and Tod his agent. But Borthwick wished, after taking out the manuscripts wanted, to return the mass of papers.

Q. Then what became of the mass of papers?

A. It was resolved to put them into the hands of Mr Alexander Ure, Borthwick's agent in Glasgow, who was instructed to institute a complaint to the Magistrates of Glasgow, stating that those were in his hand, and the violence that had been used; there was such an action raised.

Q. When?

A. That very day.

Q. When you were examining those papers, did you discover that Sir Alexander Roswell's name was there?

A. After the various manuscripts of a particular handwriting were put all together, on examination it was discovered that those manuscripts were believed to be in the hand-writing of Sir Alexander Boswell.

Q. Was there any letter with his name subscribed to it?

A. Borthwick was out for some time, and, on coming back, he was shown those manuscripts, and the post-mark of some of them. Some of the marks were cut out, and others were obliterated with ink. On examining the post-mark, I thought it was Edinburgh; but, on asking Mr Borthwick when he came in, he said it was Mauchline, and that the author he believed was Sir Alexander Oswald. But he added, if you will look among certain papers, you will find a letter from the gentlemen to whom I allude.

Q. And did you find that letter?

A. We found that letter. That letter was found, and it bore the signature of Sir Alexander Boswell. I was not acquainted with the hand-writing.

Q. When Mr Stuart saw the name of Sir Alexander Boswell, did he say any thing?

A. Nothing that I recollect of.

Q. You mentioned he never had spoken of him before?

A. He was astonished, he said he had never suspected him.

Q. What became of the selected papers?

A. They were put by me into the hands of Mr Spalding, at Mr Borthwick's request.

Q. As his own agent?

A. As his own agent; and he was specially instructed not to part with them to any person but Mr Borthwick.

Q. But they had been shown to Mr Stuart. You did not understand that the injunction was to prevent them from being shown to Mr Stuart if he wished?

A. They were to be shown to any person having an interest in them; but not to be given away by Mr Spalding.

Q. You paid the money for liberating Borthwick?

A. I did.

Q. From your own money?

A. From my own proper funds.

Q. Did you speak to Mr Stuart about assisting you to pay the money?

A. Never.

Q. Did he offer to assist you to pay the money?

A. Never.

Q. Have you any person bound to repay it to you?

A. No—except Borthwick. I have an assignation to his claim of repetition, and the claim against him.

Q. Have you any body else liable to your claim?

A. Nobody else.

Q. You did not know Mr Stuart till you were introduced by Mr Spalding on the Thursday?

A. I never saw him but once before.

Q. Had you ever any cash transaction with Mr Stuart?

A. Never.

Cross-examined by Mr M'Neill.—Q. Do you know that the process before the Magistrates of Glasgow was advocated?

A. I know it was advocated subsequent to Borthwick's liberation.

Mr Moncreiff.—Do you remember when it was advocated?

A. On the 13th or 14th of March.

Q. After the liberation and papers were procured?

A. I am sure it was after that.

James Gibson *sworn.*

Examined by Mr Cockburn.

Q. You are acquainted with Mr Stuart?

A. I am.

Q. And with Mr Roger Aytoun, writer to the signet?

A. Yes.

Q. Did you ever perceive any articles in the Sentinel

newspaper, or in the Beacon, which you regarded as offensive to you or to Mr Stuart?

A. A great many, Sir.

Q. Had you and Mr Aytoun ever any conversations about discovering the authors of those paragraphs?

A. Very many.

Q. Mr Aytoun is the agent of the family of Hamilton?

A. He is, Sir.

Q. Do you recollect of any attack being made on Mr Stuart in the first number of the Sentinel?

A. Certainly I do.

Q. Which you considered a false attack?

A. A most atrocious libel.

Q. You have heard, I presume, of a person of the name of Borthwick, one of the editors of the Sentinel?

A. I have.

Q. Do you recollect having any conversations with Mr Aytoun in the beginning of March last, about that person?

A. Mr Aytoun told me about the beginning of March.

Q. Was Mr Stuart present on this occasion?

A. He was certainly present.

Q. Tell us the purport of what took place when Mr Stuart was present?

A. Mr Aytoun told us he understood Borthwick had got possession of all the manuscripts of the libels that had appeared in the Sentinel.

Q. That was about the beginning of March?

A. One of the first days of March.

Q. Did that turn out to be true at that time?

A. For some days I conceived it to be true; but, on the last Thursday of the Session, Mr Stuart told me it was a mistake;—that Borthwick had got possesson of them, but had left them locked up in a safe; and that he had, since that time, been thrown into prison.

Q. Was that on Thursday?

A. The Thursday before the rising of the Court.

Q. Had you any farther talk with Mr Stuart about this discovery?

A. On the Thursday, the conversation was pretty general in the morning; and afterwards Mr Stuart told me, that the agent of Borthwick had come to town, and waited upon him in the Parliament House, and had offered to give up the manuscripts of the libels against him, if he would withdraw his action of damages.

A Did Mr Stuart say he had agreed to abandon the action?

Q. He said he had positively refused to come to any understanding on the subject, but had desired them to show him the manuscripts of the libels, when he would consider what should be done.

Q. You were aware, at this time, that Mr Borthwick was in jail at Glasgow?

A. I had heard he was in jail, and had been for some days.

Q. Did you give any advice to Mr Stuart how to act?

A. Not on the Thursday; but, on the Saturday, we had farther conversation, and I understood there was a proposal to give in a bill of suspension and liberation on the ground of the debt for which Mr Borthwick had been incarcerated not being due. I said I thought it was a pity to temporise in a matter of this kind,—that I thought, from the character I had heard of Alexander, he would not scruple to take means to get possession of, and destroy, the manuscripts. I said to Mr Aytoun and Mr Stuart, that, in my opinion, some one should go to Glasgow instantly, pay the debt, procure Mr Borthwick's liberation, and secure the papers.

Q. Did you offer to pay the debt yourself rather than this should not be done?

A. I did not offer; but I said, I would much rather pay the debt than run any farther risk of losing the papers.

Q. Had you been consulted about a suspension and liberation for Borthwick?

A. They were talking of giving in such a bill, which I thought was temporising a great deal more than was necessary.

Q. Were you aware there had been an action or process carrying on at Glasgow between Borthwick and Alexander, as to Borthwick's right to resume possession?

A. I was. I had been told that the Magistrates had decreed in Borthwick's favour, and that Alexander having failed to fulfil the conditions which had been stipulated between the parties, Borthwick was authorized by the Magistrates to resume his rights as a partner.

Q. And did you understand that the interlocutor was final?

A. Yes.

Q. Had you any doubt of Borthwick's right to resume possession?

A. None.

Q. Do you know if Mr Stuart had any doubt?

A. I never heard any doubt stated by any body.

Q. In short, your only fear, and cause of great dispatch, was, lest Alexander should destroy the papers?

A. My only reason.

Q. Do you know whether Mr Stuart went to Glasgow or no?

A. I knew afterwards. I did not know, when I parted with him, that he was to go to Glasgow.

Q. When did you see him again?

A. On Monday, about four o'clock.

Q. Did he give you any account of his proceedings?

A. He told me that Borthwick had put a number of papers into the hands of his agent, which he (Mr Stuart) had examined; and that, to his astonishment, he had found that Sir Alexander Boswell was the author of the libels against him.

Q. He stated he not only found, but was astonished at finding, that Sir Alexander was the author?

A. He was astonished to find that Sir Alexander was the author.

Q. Had you and Mr Stuart, before this, much confidential conversation about these libels?

A. Daily for months.

Q. Had you many conjectures about the author?

A. Many.

Q. Did you ever suspect Sir Alexander as the author of them?

A. Never.

Q. Do you know if Mr Stuart wished to compare any of the manuscripts he had found with the articles in the Sentinel newspaper?

A. I gave him my copy of the Sentinel for that purpose.

Q. You were possessed of a copy; how did you get it?

A. From seeing the libel in the first paper, I considered what the nature of the publication was likely to be, and I caused it to be regularly purchased for me in Glasgow, and marked.

Q. I wish to identify the copy of the paper you showed Mr Stuart.

(The paper was handed to the witness.)

A. That is the copy I purchased.

Q. He got that from you to compare the manuscripts with?

A. He did, when he returned it to me, he told me he had marked all the copies of which he conceived the manuscripts to be in the hand-writing of Sir Alexander Boswell; and they are marked in that copy.

Q. You are aware this discovery led to a challenge of Sir Alexander by Mr Stuart?

A. Yes.

Q. You are aware that that affair took place on the morning of the 26th of March?

A. Yes.

Q. When had you seen Mr Stuart previously?

A. At eleven o'clock of the evening before.

Q. Did he then tell you, on what day he believed that that meeting was to take place?

A. He told me it was to take place on the Thursday following.

Q. That is, two or three days after you were talking to him? In what condition, in what state of mind, I mean, was he at the time?

A. Particularly calm and collected.

Q. Did he appear to be actuated by any malice or rancour against Sir Alexander?

A. Not the least

Q. Did he describe his feeling at all to you?

A. He described himself as being placed in an unpleasant situation, from which it was utterly impossible to relieve himself in any other way than by the mode he had taken.

Q. When did you next hear any thing more from Mr Stuart?

A. About eleven o'clock, next day, his clerk called upon me, and delivered a sealed packet

Q. Was there any letter to you with that sealed packet?

A. There was.

Q. Was the sealed packet addressed?

A. It was addressed to me.

Q. Do you know the contents of the letter? Have you the letter now?

A. I have it with me.

Q. Have you any objection to show it?

A. Not the least.

Q. Read it, if you please.

"My Dear Sir,

"The other party saw the necessity of instant action, owing to circumstances not known when I saw you. Be so

kind, if I am completely done for, as to have the inclosed conveyed, according to direction, within four days after this day, not sooner than the third.

" Be quiet till you hear.

" Yours most sincerely,

" JA. STUART.

" *Charlotte Street,*
" *Four o'clock Tuesday Morning.*"

Received at 11 o'clock A. M. 26th March 1822.—J. G.
(Addressed on back, " *Most Private. Jas. Gibson, Esq.*"

WITNESS.—The inclosure contained a packet addressed to Mrs Stuart.

Q. Is the inclosure there? I should wish to see that inclosure.

A. I should mention, that, after the meeting had taken place, Mr Stuart came to my house; and when I saw him safe, I gave it back to him. He opened it in my presence, and I have it here.

Q. Be so good as read it.

(This was a short note to Mrs Stuart, dated Tuesday morning, which Mr Gibson read.)

Q. When did you next see Mr Stuart himself?

A. At two o'clock of that day.

Q. Upon Tuesday?

A. Tuesday, after the affair.

Q. Where did you see him?

A. When coming down St Andrew's Street I saw him coming out of my chambers; and, when he saw me, he turned short, and instantly ran up into my room.

Q. What took place then?

A. I followed him as fast as I could. I shut the door, and asked what had happened. He ran into a corner of the room, covered his face with his hands, and burst into tears. When he was a little composed I again put the question. He said he was afraid Sir Alexander was mortally wounded. He was in the most complete agony of mind.

Q. Did he give you any account of what had happened on the field?

A. After some time, I asked him some questions, and he answered those questions I put to him.

Q. Did he express any wish, that he had missed Sir Alexander?

A. He did.

Q. What did he say?

A. He said he had taken no aim. He wished to God he had taken an aim, for, if he had, he was certain he would have missed him—that he had never fired a pistol, on foot, in his life before.

Q. Did he say that any thing particular had passed between him and Sir Alexander on the ground? He said that he had asked Lord Rosslyn, if it would be proper in him to show the usual mark of civility to Sir Alexander, and that Lord Rosslyn having approved of it, he accordingly made an advance, and was in the act of putting his hand to his hat when Sir Alexander turned his head from him.

Lord Advocate.—I am extremely averse to interfere, but this is not a matter which touches the prisoner; and I submit to the consideration of the gentlemen opposite, how far they should proceed with it.

Mr Jeffrey.—I am quite sure Mr Stuart was mistaken insupposing that Sir Alexander had intentionally turned from him. I infer from the testimony of Lord Rosslyn, that there was an advance of that kind, but that it had not been observed by Sir Alexander. More than that we never proposed to establish.

Mr Cockburn.—Did you give Mr Stuart any advice as to what he should do?

A. I said that he must instantly leave the country,—that his remaining would only subject him to very unnecessary imprisonment.

Q. Was he himself eager to go, or to remain?

A. He positively refused at first to go. He said, whereever he went, he would be miserable, till he knew Sir Alexander's fate, and he would not go till he should know it.

Q. Did you urge him again in spite of that, to go?

A. I pressed him in the strongest manner. I said, no time should be lost in giving him information of Sir Alexander, but he must leave the country. He at last agreed. He said Mr Liston had a better opinion of the case than Mr Wood, and he hoped, in God, it would turn out to be well-founded.

Q. Had he made any preparation in the way of money for going?

A. No. I went to the bank, and got money for him.

Q. That was necessary for his going?

A. It was necessary for his going.

Q. He made it a condition of his going that you would give notice of his being willing to stand trial?

A. He did. Afterwards I met him at his own house, and the last words he said were, Remember to give notice that I shall be ready to stand trial.

Q. Did you give notice to that effect to any public officer?

A. Next morning, I saw Mr Sheriff Duff between 11 and 12 o'clock, and I gave him the notice.

Q. Verbally?

A. Verbally.

Q. That was upon Wednesday the 27th?

A. Wednesday the 27th.

Q. Did you receive any notice soon thereafter upon that matter?

A. Upon Thursday the 28th, I sent a notice to the Star and Advertiser newspapers, that that notice had been given, and, on the 29th, I received a note from Mr Rolland, Crown Agent, saying, that it had been stated in the newspapers, that Mr Stuart had given such notice, and desiring to know to whom he had given the notice.

Q. Have you Mr Rolland's letter with you?

A. I believe I have.

Q. Please read the letter?

"*Edinburgh, 29th March* 1822.

"DEAR SIR,

"In consequence of the paragraph in the Edinburgh Advertiser of this date, stating, that Mr James Stuart, W. S. had announced to the proper quarter, (as the paragraph implies,) that he was ready to stand his trial whenever he is called upon, I am directed by the Crown Counsel, who are aware that you had communication with Mr Stuart after Sir Alexander Boswell was wounded, to apply to you to know whether Mr Stuart authorized any such notice and intimation to be made for him, and if so, to whom such notice has been given.

"I am, DEAR SIR, your most obedient humble Servant,

"JAMES GIBSON, Esq. W. S. AD. ROLLAND."

Q. Did you answer that letter?

A. I answered it the same day.

"*Edinburgh, 29th March* 1822.

"In answer to your letter of this date, I must beg to refer you to the conversation I had with Mr Sheriff Duff, on Wednesday last.—I am," &c.

Q. Did you ever make any other applications for getting the trial on?

A. I wrote a letter either on the 4th or 5th of April, beg-

ging the trial might be brought on; and I received a letter from Mr Rolland on the 6th.

"*Edinburgh, 6th April* 1822.

"DEAR SIR,

"I prefix a copy of a letter I received from the Solicitor-General this forenoon.

"I am, DEAR SIR, your most obedient Servant,

"JAMES GIBSON, Esq. AD. ROLLAND."

The Solicitor-General's letter referred to was as follows:

"*Edinburgh, 6th April* 1822.

"I understand that Mr Gibson has intimated to you, that Mr Stuart is ready to stand trial when indicted.

"You will take an opportunity of explaining to Mr Gibson, that it is not intended to raise an indictment against Mr Stuart until he is in custody, and has been judicially examined. It is obvious that, by keeping out of the way till the day of trial, he would avoid a judicial examination, and there is no reason for departing in this case from the ordinary rules of criminal procedure. It is not customary to raise an indictment, without previously examining the criminal, except in cases where the party has escaped, and does not mean to stand trial."

Q. Did you answer that letter?

A. I saw Mr Rolland, and remonstrated on the subject. And I afterwards wrote him upon the 15th of April, as follows:

"I beg again to say to you, what I communicated to Mr Sheriff Duff on the 27th of March, and to you in my letters of 29th March and 5th April, that Mr Stuart will appear to stand trial, whenever the Crown Counsel shall think proper to indict him.

"Since the date of these letters, I have received yours of the 6th, with a copy prefixed of a letter from the Solicitor-General, in which he desires you to inform me. that it is not intended to raise an indictment against Mr Stuart until he is in custody, and has been judicially examined—that by keeping out of the way till the day of trial, he would avoid a judicial examination,—and there was no reason for departing in his case from the ordinary rules of criminal procedure. It was not customary to raise an indictment without previously examining *the criminal*, except in cases where the party had escaped, and did not mean to stand trial.

" I beg to submit this resolution to the farther consideration of the Crown counsel. You know that, in England, the invariable practice in cases of this kind is to indict instantly, without regard to the *person accused* being in custody,—and, if I am not mistaken, a practice has prevailed, in the few cases that have occurred in Scotland, even more favourable to such persons.—I am told, that in different cases, particularly that of Glengarry, indictments have been insisted in without the person accused being in custody;—and that, in other cases, such as Lieutenant Charles Grant for killing Mr Fowke, and Captain Maclean for killing Lieutenant Shand,—not only was there no imprisonment of the parties, but no indictment was ever raised.

" In these circumstances, I trust that the Crown counsel may see the propriety of Mr Stuart being instantly indicted, when they may depend upon his appearance. Indeed, nothing but a trial can clear up this most unfortunate business in a manner at all satisfactory to him. But, if the Crown counsel shall still determine not to indict Mr Stuart until he be in custody, I hope that they will give an assurance that there shall be no unnecessary delay, but that the trial shall be brought on as soon as can reasonably be expected. Trusting to your giving me an immediate answer, I remain," &c.

Q. Did you get an answer?

A. I received an answer on the 22d of April in the following terms:

" 22*d April* 1822.

" In a letter I have this day received from the Lord Advocate, he directs an indictment to be forthwith raised against Mr Stuart, and served; and that, when served, the trial will proceed on the expiry of the usual *induciæ*, unless Mr Stuart should himself ask for delay, or the ends of justice should demand it. I am," &c. " *P. S.*—The Court of Justiciary does not meet till Monday the 20th of May, and that day at present is allotted for the trial of Alexander M. Anderson. Probably Monday, the 27th May, may be taken for Mr Stuart's trial."

Q. Did you return an answer to that letter, or again write to Mr Rolland?

A. I wrote several letters to, and had several meetings with, Mr Rolland. I wrote him again on the 18th May as follows:

"*18th May* 1822.

"I am extremely mortified to learn from your clerk today that Mr Stuart's trial is again delayed.

"You know that, on the 27th of March, I intimated to Mr Sheriff Duff that Mr Stuart would be ready to take his trial whenever it was thought proper to bring it on. This resolution I again communicated to you on the 4th of April, and very often afterwards.

"On the 24th of April the Lord Advocate assured a friend of Mr S.'s that he had some time before written from Weymouth to desire that the trial be proceeded in without delay; and that, in answer to a letter from Scotland, of date the 16th of April, saying that there was no reason for hurrying it on, his Lordship had again written, repeating the order to proceed as soon as possible.

"On the 22d of April you wrote me that you had received the Advocate's orders to raise the indictment forthwith, and that it would be proceeded in without delay, "unless Mr Stuart should himself ask for delay, or the ends of justice required it;" and you add in a P. S., "that probably the 27th of May may be taken for Mr Stuart's trial." You afterwards wrote that it could not take place sooner than the 3d of June; I am now informed by your clerk, that, "on account of the Solicitor-General having only returned from London five days ago, the trial cannot take place sooner than the 10th of June," and no assurance has been given that it will certainly take place on that day. I need not repeat to you what I have so often expressed—the unceasing anxiety of Mr Stuart to have the trial brought on as speedily as possible, and the extreme prejudice which he suffered in many points of view from the delay."

Q. Tell me, in general, did you continue, to the last, endeavouring to bring on this trial?

A. I did.

Q. You are not aware, Mr Stuart absconded or fled from justice?

A. Certainly not.

Q. Were you ever employed to act as agent for Mr Stuart since the indictment was raised?

A Never. I never intended doing so.

Q. You have known Mr Stuart a great many years?

A. Most intimately.

Q. In public and in private?

A. In public and in private.

Q. You will be so good as say, what your opinion of his character is, principally as to peaceableness and good temper?

A. He is one of the kindest-hearted, and best-tempered men I ever knew.

Q. Have you ever known him given to quarrelsomeness?

A. Never.

Q. Do you know him to be a person, or the reverse, who is apt to make his politics disturb his private friendships?

A. I never knew him introduce politics so as in any way to interfere with private friendship.

Q. What is the date of the last letter, written by you, relative to bringing on this trial?

A. 18th May.

Q. Please, Sir, read that letter once more.

(The letter again read by the witness.)

Mr Moncreiff.—You have a volume of the Sentinel in your hand?

A. Yes.

Q. You spoke of the first number of Sentinel. What article in that number did you refer to?

A. It bears the title "James Stuart and the Lord Advocate."

Q. You are aware Mr Stuart went to France?

A. Yes.

Q. You have mentioned repeated solicitations were made by you on his part to bring on the trial?

A. Yes.

Q. Was this in consequence of the instructions when he left you, or did he renew them?

A. They were originally upon his verbal instructions, and I afterwards received a letter, hoping I had given the necessary intimation.

Mr Liston, Surgeon, *sworn.*

Examined by Mr Moncreiff.—Do you know Mr Stuart?

A. Yes.

Q. Do you remember his calling upon you about the end of March last?

A. Upon the 26th.

Q. At what hour?

A. At an early hour in the morning, a little before five.

Q. Did he mention the business on which he called?

A. He did not. He wished me to go to the country with him.

Q. Did you go along with him?

A. Yes.

Q In the course of the journey did he explain the purpose of his journey, or did you find it out?

A. I understood what the object was. He did not tell me till I got to the other side of the water. I guessed his purpose.

Q. Did he mention the party he was to meet?

A. Upon the other side of the water he did.

Q. Did he say any thing particular about what might be the event?

A. He said there was no other course left for him but the one which he had taken; and said, he had no animosity towards Sir Alexander Boswell. He seemed to apprehend danger to himself.

Q. Did he say any thing as to his wish to kill his opponent or otherwise?

A. He said Sir Alexander was a relation of his,—that he had no animosity against him,—that he did not wish to injure him in any way. He mentioned something of a duel which had taken place between Captain Ayton and another gentleman, and hoped no greater damage than happened on that occasion would be the result of the intended meeting, one of the parties to the duel he mentioned having been wounded in a toe.

Q. Where did you go to?

A. Hillside.

Q. And what took place at Hillside? How long did you stay there?

A. About an hour.

Q. What was Mr Stuart engaged in doing there?

A. He was engaged among his papers. He wrote some, to one of which I put my signature. I understood it to be his settlement. He put some of the papers in a drawer in the sideboard.

Q. Did you see him put up any keys?

A. He put up a number of papers. I was not attending much to what he was doing.

Q. Did he give you any note or memorandum?

A. On the road to Auchtertool he did.

Q. Did he tell you any thing about it?

A. To read it in case he should be hit.

Q. Have you got that memorandum?

A. Yes.

Q. Will you be so good as read it to us if you please?

(Witness read as follows:)

"If I am hit, and it is wrong to take me to Edinburgh, I wish, if not risking too much, to be taken to Hillside, where every thing is comfortable, and where I will recover far sooner than any where else.

"If my senses remain, and I am not moribund, send as fast as possible for my wife, with all due caution. She is, of all her family, that one who would the least wish me to live with a dishonoured name.

"I have a dislike to be over-bled.

"J. S.

"*Hillside, Tuesday morning,*
March 26."

Q. Were there any arrangements made about the duel, at Hillside, before you left it?

A. Not that I know of.

Q. Then you went along with him to Auchtertool?

A. Yes.

Q. How did Mr Stuart appear at that time; was he much agitated, or was he cool?

A. Quite cool.

Q. Did you see the gentlemen take their ground when it was measured?

A. Yes.

Q. Did you see them fire?

A. I did not. I turned my back.

Q. You saw Sir Alexander afterwards?

A. Yes.

Q. And did you do any thing professionally?

A. I removed some portion of the broken bone, and examined the wound as far as could be done.

Q. Did you remain or did you go away after that?

A. I remained and assisted in carrying him to Balmuto. I remained there about an hour and a half.

Q. Then you came away, leaving Dr Wood there, I suppose?

A. Yes.

Q. And you returned to town along with Mr Stuart?

A. Mr Stuart had gone before; I returned to town by myself.

THOMAS ALLAN, *sworn.*

Examined by Mr JEFFREY.—Do you know Mr Stuart?

A. I do.

Q. You heard of the unfortunate meeting between him and the late Sir Alexander Boswell recently after it happened?

A. I did.

Q. You heard of his death in London?

A. I was told he was dead the day before I left London.

Q. Had you then heard of his death from any certain authority?

A. I had no certain knowledge of his death at that time; but it was reported in such a manner, that I rather suspected it was the case.

Q. You had heard Mr Stuart had gone to France?

A. I heard he had gone the day before.

Q. You saw some of Mr Stuart's friends in London, and carried some message to him?

A. I did.

Q. Where did you find him?

A. At the Hotel De Meurice at Calais. I carried him his passports. The object of my journey was partly to convey his passports to him. I had learnt from Sir Ronald Ferguson that he had left London without his passports.

Q. How did Mr Stuart receive you, and what conversation had you with him?

A. It was necessary to give that explanation of my coming there; and, after I put the passports into his hands, he said to me, What news do you bring me? I immediately understood from him that his question related to Sir Alexander Boswell; and I stated, that I was sorry to say the news were bad for him. Then, said he, Sir Alexander is dead. I replied, such was the report in London the day I left it.

Q. Did he say this in a calm, or in an agitated and disturbed manner?

A. With a great deal of anxiety in his manner. When I told him he was dead, he was in very great agitation, and burst into tears.

Q. Did any thing more pass? What did you say upon that?

A. He continued in great distress. I thought it right to recall him a little to himself, and pointed out to him the manner the business had been forced upon him. True, he said, but remember his poor wife and family.

Q. And did he continue agitated and distressed?

A. He certainly did for a considerable time.

Q. Were you much with him?

A. We were together for a fortnight or three weeks.

Q. Did he still appear to be much distressed at what had happened?

A. His mind was constantly returning to it. Whenever the conversation flagged, he seemed constantly absorbed in thought.

Q. You were the first person brought him this intelligence?

A. Certainly.

Q. Did Mr Stuart express any desire to remain out of the country longer than was necessary to save himself from imprisonment?

A. Quite the contrary. He always expressed his anxiety to return, and stand trial, if his friends would allow him.

Q. Was there any report that it was the intention of Government to apply to the Government of France to have Mr Stuart taken up?

A. I believe such a report existed.

Q. Was any application of the kind made to your knowledge?

A. No. While in Paris, Mr Stuart received a letter from Mr Gibson, stating the delay of the trial. Mr Stuart wished to have an interview with the English Ambassador. He waited on Mr Crosby, and explained to him the object of his wish to have an interview with the Ambassador himself. He went to the Ambassador's, and had an interview with Sir Charles Stuart.

Q. Did you go with him?

A. I went to the Ambassador's Hotel with him, but I did not see Sir Charles.

Q. Do you know if he afterwards came to Calais to be in more near intercourse with his friends?

A. He did.

Q. Did you know he wrote to the Ambassador to that purpose?

A. He wrote a letter before he left Paris to the Ambassador, intimating his intention of removing to Calais. * I saw that letter, and know it was delivered. It stated he would always be ready to attend, when called upon.

JOHN CLERK, Esq. of Eldin, Advocate, *sworn*.

Examined by Mr MONCREIFF.—

Q. Do you know Mr Stuart?

A. Yes, I am acquainted with Mr Stuart.

* This Letter will be found in Appendix, No. XII.

Q. Did you meet with him in London soon after this event took place?

A. Yes, Sir.

Q. Did you afterwards see him in Paris?

A. Yes.

Q. When you saw him in London, it was not known whether Sir Alexander was dead or not?

A. It was not known.

Q. When you saw him in Paris, did you give him the intelligence of Sir Alexander's death?

A. I did not give Mr Stuart the intelligence of the death personally, but I have reason to believe I was the means of communicating the intelligence to him; and I saw him soon afterwards.

Q. How did he appear to be affected by the intelligence of the death of Sir Alexander?

A. He appeared to me to be very deeply affected. I saw him twice before the intelligence of the death was received, and he was apprehensive bad news might arrive; but when I saw him after the intelligence of the death had been communicated to him, he appeared to be very deeply affected indeed. He shed tears, and was much moved. He was not so much so afterwards, though he remained serious.

ROBERT MACONOCHIE *sworn.*

Examined by Mr MURRAY.—

Q. Were you acquainted with the late Sir Alexander Boswell?

Q. I was.

A. You were well acquainted with him?

Q. Very well acquainted with him.

A. You received a letter from him in the month of March last?

A. I did.

LORD ADVOCATE.—I hope the Counsel for the defence will not deem it necessary to have that letter read: it is a private confidential letter. If they do, there it is.

Mr JEFFREY.—I can assure the Court and the learned Gentlemen opposite, that we have no desire to do more than we feel to be necessary for the defence of the prisoner; and I would be sorry to do any thing that could excite pain to the friends of the deceased, or doubt of the propriety of our conduct in the minds of the learned Gentlemen opposite, whose

good opinion I am anxious to possess. On the purport of that letter I will make but one remark. The letter shows that Sir Alexander considered himself as liable to the call he received, as bound to answer it, and particularly a call at the instance of Mr Stuart,—that, at the time he wrote that letter, he contemplated the possibility of putting Mr Stuart's life in hazard. And we, therefore, think it material to prove this, and to have the letter produced also, as another specimen of Sir Alexander's penmanship, in order to complete the proof of the hand-writing, and to show, *comparatione literarum*, that the other documents founded on are genuine.

With these views, whatever my own inclination may be, I cannot abstain from calling for production of that letter. And I hope I shall not be thought to have done anything improper or unnecessary on this occasion.

Lord Justice-Clerk.—What is the date of the letter?

A. The 24th of March.

Mr Murray.—When you received it, did you understand it to be from Sir Alexander?

A. I supposed it to be so, and I answered it to Sir Alexander.

Q. Did you ever receive any subsequent communication from Sir Alexander Boswell?

A. No, none.

Mr Cockburn.—All of us, the Counsel for Mr Stuart, are of opinion, that every word of that letter is necessary for his defence, and ought to be read.

(The letter, which will be found in the Appendix, No. IX. was read.)

Dr Coventry *sworn*.

Examined by Mr Jeffrey.—

Q. Are you acquainted with Mr Stuart, the pannel at the bar?

A. I am.

Q. Have you been long acquainted with him?

A. Eighteen years.

Q. Have you known him in public and in private society?

A. Very well in both.

Q. I ask you what is your opinion of his temper and disposition, especially as to violence or moderation.

A. His temper is of the very best.

Q. Have you had occasion to meet him in pretty large meetings, where there was talk and raillery going on?

A. Yes.

Q. Is he a safe man to joke or tease a little?

A. Perfectly safe.

A. Very conciliating in his disposition and manners?

A. Very.

Q. Did you ever happen to see him where there was any disposition to quarrel among others?

A. Yes.

Q. And how did he comport himself?

A. He was always disposed to peace.

Q. Did you know the late Sir Alexander Boswell?

A. Very well.

Q. Had you been long acquainted with him?

A. For about twenty years.

Q. Had you ever any correspondence with him?

A. A great deal of correspondence.

Q. Did he attend your lectures?

A. I believe he did.

Q. Are you acquainted with his hand-writing?

A. Yes.

(The signed letter, the song, and the letter signed Ignotus, were shown to the witness.)

Q. Look at the address of the one dated "Dumbarton." Is that his hand-writing?

A. It is his.

Q. The letter signed Alexander Boswell—is that his genuine hand-writing?

A. Yes.

Q. There is a single sheet—a metrical composition—look at it, and turn to the address?

A. The beginning of the song is less like his hand-writing; but the end becomes more like it. But I believe the whole to be his. The B's are the same, and the C's and Y's throughout the paper are the same.

(Other papers here shown to the witness.)

Q. Have you seen those papers before?

A. No.

Q. Look at the address of the song, and of the letter signed "Ignotus." Do they appear the same?

A. I think they are quite the same hand-writing.

Q. Look at that letter?

Crown Counsel.—What letter is that?

Mr Jeffrey.—We have hitherto only been examining the hand-writing of the documents libelled, and produced by the prosecutor. Along with our defences, and in our defences, we explain the purposes for which we bring forward

certain other manuscripts; two more, one signed by the fictitious name of "Mark Tod," that which I have now in my hand, and the other headed on the top, "The late Lieutenant James Stuart." And we have stated, both in the defences, and in the opening to-day, that Mr Stuart was decided to require the explanation of and to come to the meeting with Sir Alexander Boswell, not only on account of the evidence libelled, but on account of other attacks, the evidence of which was in his hands at the time that Lord Rosslyn communicated with Sir Alexander and Mr Douglas. If we find no objection to it, I intend to prove that these two, being original articles of what were published in the Sentinel, are also in the hand-writing of Sir Alexander Boswell.

Mr M'Neill.—If these documents are merely for establishing the identity of Sir Alexander's hand-writing, we do not object.

Mr Jeffrey.—We shall take no such objection. I intend to found upon them in corroboration of our statement, that beside the papers taken by Lord Rosslyn to Mr Douglas and Sir Alexander, there were other writings of Sir Alexander's offensive and injurious to Mr Stuart. He obtained the copies of other articles, in reference to which he thought himself justifiable in calling on Sir Alexander to avow whether he was the author of what had been founded upon.

Lord Advocate.—We certainly mean to object to this course. We submit to the Court, that the only documents which can bear upon this case as a justification of the gentleman at the bar, are those which were founded upon, and produced, and stated to the late Sir Alexander Boswell, and as to which he was called to stand to the consequences. And we humbly submit, that this gentleman is not now to produce documents which were not produced to the gentleman now deceased, and as to which no duel took place. It is quite plain, if these had been founded upon, Sir Alexander might either have denied them to be his, in consequence of which no evidence of any kind, according to Lord Rosslyn, would have been received to the contrary, or he might have made such an apology with respect to them as would have been satisfactory. Now, to bring forward these documents in justification of the conduct of the prisoner at the bar, would be a most indecorous proceeding, and such as cannot be allowed at this stage of the proceedings.

Lord Justice-Clerk.—In the first place, the Court must hear the defences. Let us hear the defences read, and see if these documents are therein referred to.

(Here the defences were read.)

Lord Hermand.—The Prosecutor is not allowed to prove any thing that is not in the indictment; but can it be said a pannel is confined to any thing a Prosecutor is willing to produce? He has here produced the articles mentioned to Sir Alexander Boswell; but is he entitled to limit the productions to what might appear to him to be of an injurious nature. Unless we go some centuries back, we cannot receive such a rule.

Lord Justice-Clerk.—I see no difficulty here. The present question relates to articles which are alleged to be the manuscripts of other articles in the publication alluded to, and which the prisoner says he will prove to be of the hand-writing of the deceased. No doubt the Public Prosecutor has founded upon certain articles in the hand-writing of the deceased, or some of which he admits, and others not, to be of his hand-writing, and which are alluded to in the conversation which preceded the duel. But, most unquestionably Mr Stuart, standing upon his defence, cannot be confined to those papers produced by the Public Prosecutor, but may extend his defence to other papers which he conceives to have been of the hand-writing of the deceased. It does not appear to me that he can be restricted to the papers produced by the Public Prosecutor.

Lord Gillies.—It is quite clear to me that the pannel is entitled to prove his defence. I coincide with the opinion your Lordship has given.

Q. Dr Coventry, look at the hand-writing of that paper, signed "Mark Tod,"—does it appear to you to be Sir Alexander Boswell's hand-writing?

A. I think it is his hand-writing.

(Another paper, "The late Lieutenant James Stuart," was handed to the witness.)

Q. Have you formed any opinion as to the hand-writing of that?

A. It is the same hand-writing.

Q. On examining those papers, you are satisfied they are the same hand. Have you seen them before?

A. I think them the same hand; but I did not see them before.

Charles Dalrymple Gairdner *sworn*.

Examined by Mr Jeffrey.

Q. Where do you live?

A. At Kilmarnock.

Q. You are a manager of the Banking House of Hunter and Company?

A. Yes.

Q. Were you well acquainted with the late Sir Alexander Boswell?

A. Yes.

Q. You had served in the same troop of cavalry?

A. Yes, I had.

Q. For many years?

A. For six years.

Q. Did you correspond with him?

A. Yes; and I had occasion to know his hand-writing otherwise.

Q. Did he do business with your bank?

A. He did business with our bank at Ayr.

Q. But you know his hand-writing. Have the goodness to look at that letter? (The signed letter was handed to the witness.)

Q. Do you take that to be his genuine hand?

A. That is his hand.

(The witness was then asked to look at the letter signed "Ignotus.")

Q. Does that appear to be the same, or a different hand? Look at that other? Is that the same hand-writing?

A. It appears to be the same hand-writing.

(The song was handed to the witness.)

Q. Look at the latter part of that? Is it the same hand?

A. This writing was formerly shown to me, and, at first sight, I could not identify the hand-writing at all; but, upon comparing it, and examining it minutely, I am satisfied it is the hand-writing of Sir Alexander Boswell, particularly the latter part of it. The first part of it is disguised; the latter part of it, I am certain, is of his hand-writing.

Q. Compare the address of the song with that of the other papers lying by you? Do they appear to be different?

A. They appear to be of the same hand.

Q. Would you know the address to be in the hand of Sir Alexander?

A. I would know it to be the hand-writing of Sir Alexander.

Q. Look at that paper signed "Mark Tod?"

A. I conceive that also to be the hand-writing of Sir Alexander Boswell.

Q. Next look at the paper with the title "The late Lieutenant James Stuart?"

A I think that also is Sir Alexander's hand.

Mr JEFFREY.—We have three or four witnesses yet as to the hand-writing.

ADAM DUFF, Esq. *sworn.*

Examined by Mr MURRAY.—Q. Do you recollect certain proceedings before you at the instance of Mr Alexander, with concurrence of the public prosecutor, to recover certain papers which he alleged had been taken from the Sentinel office?

A. Yes, I do.

Q. When did that take place?

A. About the end of March.

Q. Do you recollect Mr Spalding being examined before you as the agent for Mr Borthwick, and ordered by you to produce certain papers which he said had been taken from the Sentinel office?

A. Yes.

Q. You ordered him, and he produced them?

A. Yes.

Q. They were delivered under protest?

A. Yes.

Q. Is that your signature along with Mr Spalding's?

A. This is the docquet that Mr Spalding and I affixed upon the papers. (Witness read the docquet signed by him and by Mr Spalding.)

Q. Look at that paper. (Shown the paper entitled "The late Lieutenant James Stuart.") Is that one of the papers marked by you and Mr Spalding?

A. It is.

Q. Look at that. (Shown "Mark Tod.") Is that another of them?

A. Yes, this is one of the papers marked by us. The docquet is as follows. (Reads the docquet.)

Q. That is the docquet affixed by you and Mr Spalding at the time?

A. Not exactly at the time. The papers lay under my custody two or three days till the docquets were put on and signed.

Q. Were you examined as a haver to produce these papers?

A. Yes, on Thursday last.

Q. Were they then produced by you?

A. I could not produce them, because, some day betwixt the 5th and 10th April, a petition was presented to me in

name of the Lord Advocate, to have the papers forwarded to the Crown Agent, to be produced on the trial of William Murray Borthwick at Glasgow.

Q And you had delivered them?

A. I ordered them to be delivered to the Crown Agent, who signed a receipt for them on the back of the Lord Advocate's petition.

Mr Moncreiff to the Lord Advocate.—We trust your Lordship is now satisfied that we have proved these documents?

The Lord Advocate.—By no means.

Mr Moncreiff.—Then we shall call Mr Spalding.

Mr Jeffrey to the witness Mr Duff.—Q. Do you remember of the parties Stevenson and Stuart being bound over to keep the peace?

A. Yes, I do.

Q. The subject was on account of a publication in the Beacon newspaper?

A. Yes.

Q. Do your recollect of Mr Stuart calling on you subsequently, stating that he continued to be assailed by publications in that paper, and that he then put it to you that these publications should be inquired into by you and put a stop to, or interdicted?

A. I recollect of his calling on me for that purpose.

Q. And you declined to interfere?

A. I did not think that that was the proper course to be adopted, because it might appear to be an undue interference on my part with the liberty of the press.

Mr Jeffrey to the Court.—The letter signed "Mark Tod" will be found in No. 17. of the Sentinel newspaper at p. 133. The clerk will read it at the conclusion of the evidence for the pannel; and in the same way he will read the article, "The late Lieutenant James Stuart," which will be found in No. 20. of the Sentinel, p. 126. We say that the manuscripts of these publications are holograph of Sir Alexander Boswell.

William Spalding recalled,

And examined by Mr Moncreiff.—You told us, when you were lately before us, that you brought away from Glasgow some of the manuscripts of the Sentinel newspaper, and carried them to Edinburgh, after which you were obliged to produce them before the Sheriff?

A. I did.

Q. Now, look at that paper, (shown the paper signed

" Mark Tod,") and look at the docquet at the end of it. Is that one of them?

A. It is.

Q. Look at that one also, (shown " The late Lieutenant James Stuart.") Is that one of them?

A. It is.

Q. These were in your possession?

A. They were.

Q. Did you produce them to Mr Stuart?

A. Once, I did. At least the one signed " Mark Tod" was so produced by me to Mr Stuart.

Q. Had he seen them before, when you were examining them?

A. He had.

Mr MONCREIFF to the Court.—We now refer to the first number of the Sentinel. After that, we refer to the process of damages at the instance of Mr Stuart against Borthwick and Alexander, the printers and publishers of the Sentinel newspaper; and particularly to the last article of the answers for the defenders in that action to Mr Stuart's condescendence.

JUSTICE-CLERK.—Was that answer put in, and does it form part of the process, after it came judicially before the Jury Court; or was it lodged in the process while it remained in the Court of Session?

Mr COCKBURN.—It was only lodged the other day, after the process was transmitted to the Jury Court. No Judge of the Jury Court ever saw it. We desire to have read by the clerk the 7th, 14th, and 15th articles of that answer.

(The articles were then read by the clerk, as in the Appendix.)

GEORGE BRUCE, Sworn by LORD SUCCOTH.

Examined by Mr JEFFREY.—Are you a messenger at arms?

A. Yes.

Q. Were you employed, in execution of a warrant, to bring Sir Alexander Boswell and Mr Stuart to the Sheriff on the night of the 23d March last?

A. I was.

Q. At what o'clock was it?

A. About eleven o'clock. I went to Sir Alexander's house, and on inquiring for him, I was told he was in bed; and the servant said he was unwilling to disturb him. I told him the person wished to see him, who was to call on him in the even-

ing. The servant then went up stairs, and in a little Sir Alexander came down. He was told he was my prisoner.

Q. How did he take it?

A. He was very unwilling to come along with me at first, but at length said he would accompany me in a few minutes, He said to me, What if I should return and say he was not at home? I told him I could not do it; and that he must come with me.

Q. He went at last?

A. He wished to go up stairs for a few minutes.

Q. Did he go?

A. Yes.

Q. Did he stay long?

A. Nearly ten minutes. I sent in a message to say I could not stop longer.

Q. Did he make any remark or observation of what he understood this arrest to be about?

A. On the way to the Sheriff, he said, some of his friends must have given this information;—that they had done it for good, but it was the worst thing they could have done for him, as it would oblige him to go and live on the Continent, if, —— and he stopped, and said nothing more.

Lord Kinedder sworn. Examined by Mr Jeffrey.

Q. May I ask your Lordship if you are acquainted with Mr Stuart?

A. Perfectly well.

Q. Have you been long acquainted with him?

A. I cannot exactly say; I should think three or four and twenty years. Certainly above twenty.

Q. Pretty intimately acquainted?

A. Extremely so.

Q. You have known him both publicly and privately?

A. Yes.

Q. So that you have met him in the country, as well as in town?

A. Yes.

Q. May I ask, what opinion you have formed of Mr Stuart, in point of respectability, general character, and gentlemanly conduct?

A. During those twenty years, I have been very much connected with Mr Stuart professionally, and likewise privately; and certainly, in all my lifetime, I never knew a more perfectly good-tempered, kind-hearted, amiable man, nor a safer companion.

Q. You are aware that Mr Stuart takes a considerable share in politics. I think he has not the good fortune to have agreed with you on political subjects?

A. On subjects of that kind, we differed very decidedly indeed.

Q. I introduced the observation, in order to ask whether you considered him as liable to be tainted with personal hostility against those who differed with him in political sentiments?

A. Certainly not; very much the reverse.

Q. You never found him make difference of political opinion any bar to your cordiality in private life?

A. No. I never, in any communication I have had with Mr Stuart, had the smallest difference with him in private life.

Q. Perhaps you may recollect an occurrence that happened in Fife some years ago, when, by some accident or cause, his name was omitted in the commission of the peace?

A. I have heard of what occurred at that time.

Q. You will perhaps recollect the tenor of the resolutions adopted at a meeting held, in consequence, on that occasion, to get his name replaced?

A. No farther than that it was for the purpose of having Mr Stuart's name restored.

Q. Was a resolution passed expressive of the opinion the meeting held of his character?

A. Yes.

Q. Was it unanimously and cordially adopted by the meeting?

A. Yes. It was at Lord Moray's. It was in a small committee at Lord Moray's, at which I was present.

Dr Robertson Barclay Sworn.

Examined by Mr Jeffrey.

Q. Are you acquainted with Mr Stuart, the pannel?

A. Very well.

Q. Have you known him for many years?

A. Above twenty years.

Q. You reside in his neighbourhood in the country?

A. Within eight or ten miles of him.

Q. In the same district in Fife?

A. Yes.

Q. Have you had frequent occasions to meet him in public and private?

A. Yes.

Q. What is your opinion, and, so far as known to you, the general opinion, of his character for respectability and ho-

nour, but chiefly in respect of temper—I mean as to his being peaceable or quarrelsome?

A. His character is as respectable as that of any gentleman in the county; and as for temper, I have never known a man better tempered.

Q. Do you remember the occasion of Mr Stuart's name being omitted in the new commission for the peace of the county, and of a meeting being called in order to have it replaced?

A. Yes.

Q. Did you attend that meeting?

A. I did.

Q. Were the resolutions generally adopted?

A. They were. It was unanimously resolved to apply to the Lord-Lieutenant of the county to restore his name to the commission.

Q. Resolutions were proposed on that occasion?

A. Certainly.

Q. Was there a considerable attendance on that occasion?

A. It was a meeting more numerous than usual.

Mr Jeffrey.—I beg your attention to what I am going to read.

(The Resolutions were then read by Mr Jeffrey. *)

Mr Jeffrey.—There is a gentleman who sits at the bar, Mr Erskine of Cardross, to whose testimony being taken as to Mr Stuart's character, I fancy there will be no objection, although he has been present during this trial. (No objection stated.)

Mr Erskine Sworn.

Examined by Mr Jeffrey.

Q. Are you intimately acquainted with Mr Stuart, who is sitting by you?

A. I have been so from his infancy up to this moment.

Q. Were you connected together in your education?

A. We are very nearly connected by blood. At an early age we were very much together, and so we have continued to be in after life.

Q. You have continued intimate since?

A. Intimate till the present time.

Q. What is your opinion, upon oath, as to his character for honour and respectability, and more particularly as to disposition and temper—whether is he disposed to seek or avoid quarrels?

* See Appendix, No. III.

A. As to disposition, he is particularly mild and gentle. I have ever been of opinion he has more of the milk of human kindness in him than any person I ever met with. I never heard him make an ill-natured remark of any person, in the course of my life, on any occasion whatever.

Mr William Gulland Sworn.

Examined by Mr Jeffrey.

Q. You reside in the western district of Fife?

A. Yes.

Q. Are you well acquainted with Mr Stuart?

A. Yes.

Q. Have you known him for a long period of time?

A. Yes.

Q. And met him both in public and on private occasions?

A. Yes.

Q. Have you commonly gone along with or against him in political votings?

A. Always against him.

Q. I think you acted as an agent for General Wemyss in the canvass for the county in the year 1806?

A. I did what I could for my friend.

Q. Mr Stuart was engaged for Mr Ferguson of Raith in the same occupation?

A. Yes.

Q. In the county meetings do you not usually meet with Mr Stuart?

A. I do.

Q. At district meetings?

A. Yes.

Q. From what you know of this gentleman, in the way of friendship and opposition, will you give us your opinion as to his character generally, and particularly as to his disposition and temper?

A. His character is good, and his temper also good, as far as I know him.

Q. You know he held a lieutenancy in one of the Yeomanry Cavalry troops?

A. Yes. He gave up his commission in 1819. I served with him about twenty years in that troop.

Q. Was he very zealous and attentive in the duty of that troop?

A. Very zealous and very attentive.

Q. Did he appear to make any distinction at the mess, or any where, on account of political differences of opinion ?

A. Never ; he rather discouraged any tendency to dispute on politics.

FRANCIS WALKER, W. S. Sworn.

Examined by Mr CUNINGHAME.

Q. How long have you known the prisoner ?

A. Thirty years and better ; intimately for twenty.

Q. You and he have been decidedly opposed to one another in political sentiments ?

A. We were always good friends, and generally of the same views, except as to politics.

Q. Did he appear to you a person who allowed political differences of opinion to interfere with his private sentiments of friendship and regard in private life ?

A. I never differed with him in private life.

Q. And were you in the habit of meeting with one another both in town and country ?

A. Frequently.

Q. What is your opinion of his demeanour in private life, particularly as to disposition and temper ?

A. He is a remarkably good tempered man,—not a man likely to give or take offence rashly upon any occasion.

Q. Did you always consider him as a safe companion ?

A. I did.

Q. More given to make up than widen breaches ?

A. Certainly.

WALTER COOK, W. S. Sworn.

Examined by Mr JEFFREY.

Q. Have you been long acquainted with Mr Stuart ?

A. Yes, I have, twenty-three or twenty-four years at the least.

Q. Have you been in an intimate state with him most of that time ?

A. Yes, I was in a society with him at a very early age—and I have been always on a very pleasant footing with Mr Stuart.

Q. I think Mr Stuart and you have not quite agreed in politics ?

A. Not altogether.

Q. Did that ever make any difference between you ?

A. Never in the least, Sir.

Q. Did you know any man in whom political difference makes less in private friendship?

A. I can only state, as to Mr Stuart, I am not aware it ever made any on his mind. I have often differed with Mr Stuart in opinion, but no difference of political opinion ever created any impression on my mind against Mr Stuart, or any difference in friendship betwixt us.

Q. You were rival competitors for an honourable office a few years ago,—that canvass was conducted with good humour?

A. I very often had occasion to say, no canvass could be more fairly and honourably conducted. Mr Stuart was the successful candidate Every part of Mr Stuart's conduct was as honourable and as fair as it was possible to be. The general opinion was, that the canvass would run very nearly betwixt us. Our respective friends were very active for a period of more than two months. This made no change on Mr Stuart; on the contrary, it rather increased our friendship.

Mr Jeffrey.—What you have stated is most honourable to both. Upon that may I ask you, Whether you have ever seen in Mr Stuart a disposition to quarrel with others?

A. I have never seen any instance to make me think Mr Stuart was at all given to quarrel.

Richard Mackenzie, W. S. Sworn.

Examined by Mr Cockburn.

Q. Have you known Mr Stuart long?

A. Rather more than thirty years.

Q. Intimately?

A. Intimately.

Q. In all sorts of business?

A. Yes.

Q. In the intercourse of private and public life?

A. Yes.

Q. What is your opinion of his character in reference to peaceableness of disposition?

A. He is a very amiable and remarkably good tempered and agreeable man.

Q. Have you ever known him addicted to quarrel?

A. No.

Q. Or ever indulge in any vindictive feelings?

A. No.

Q. I believe you have not the fortune to agree in politics,—has that tended at all to embitter your intercourse with one another?

A. I have been for twenty years a member of a club along with him, supping together frequently, and I do not think I ever saw him a moment out of temper during the whole time.

HAY DONALDSON, W. S. Sworn.

Examined by Mr MONCREIFF.

Q. You have been well acquainted with Mr Stuart?

A. Yes.

Q. How long?

A. Nearly thirty years.

Q. How did you first become acquainted?

A. I think we became acquainted at College about 1793 or 1794.

Q. You have had a good deal of intercourse together?

A. Very much indeed.

Q. I think you were at one time in partnership?

A. From 1804 to 1816, about eleven years and a half.

Q. In the course of that time you have seen a good deal of him?

A. Very much.

Q. How did you find him in point of temper and disposition?

A. I always considered him as eminently distinguished for command of temper, kindliness of disposition, humanity, and every correct and honourable principle.

Q. Were you accustomed to hear him speak harshly of people?

A. I do not remember a single instance of his applying a harsh epithet to any man whatever, either in a public or private capacity.

Q. I need not ask you, then, if you consider him a safe companion?

A. Of all men I ever met with in the intercourse of society, I should the least hesitate to apply that character to Mr Stuart.

Q. I believe you do not agree in politics?

A. Upon that subject we entirely differed in opinion.

Q. Have you been accustomed to converse with him on political topics?

A. Freely and unreservedly.

Q. Without fear of this leading to any disagreement or difference between you?

A. Never; I have often conversed with him, and heard him converse, on political subjects; but neither in his conversations with myself, nor in that more general society in which I was accustomed to meet him, did I ever observe him indicate any keenness or intemperance on political subjects.

Q. The partnership between you is dissolved?

A. It was dissolved about six years ago.

Q. How was that done? did you part in good humour?

A. It was done very much upon my own suggestion; and, I believe, Mr Stuart did me the honour to express his concern and regret that we should separate. But neither in the discussions preparatory to that event, nor in the arrangements consequent on it, did he ever, on any occasion, act to me otherwise than in perfect good temper.

Q. And you have continued friends ever since?

A. We have, down to the present time.

Mr Jeffrey.—It is quite unnecessary to go on with this. With the reading of the papers proved, we will close our case.

Mr Cookburn.—I wish to read to the Jury the offensive passages in the articles of the Sentinel, that have been proved to be in the hand-writing of Sir Alexander Boswell. I shall first read three or four lines of the Song. I shall read from the printed copy. I read the two passages pointed at by Lord Rosslyn. The words are—

There's stot-feeder Stuart,
Kent for that fat-cow—art,
How glegly he kicks ony ba', man;
And Gibson, lang chiel, man,
Whase height might serve weel, man,
To read his ain name on a wa', man.
And they crack and we tak, &c.

Your knights o' the pen, man,
Are a' *gentlemen*, man,
Ilk *body's* a *limb* o' the law, man;
Tacks, bonds, precognitions,
Bills, wills, and petitions,
And *ought* but a *trigger* some draw, man.
And they crack and we tak, &c.

Mr Cockburn then read passages from each of the articles, "Mark Tod" and "The late Lieutenant James Stuart."*

* These articles are printed in the *Appendix*.

Mr Cockburn.—There is one other passage which I wish to read from the *first* number of the Sentinel.

Mr M'Neill.—This article is not alleged to be in the hand-writing of Sir Alexander Boswell, and it is the subject of the action in the Jury Court, now in dependence.

The passage was then read by Mr Cockburn. (See Appendix, No. V.)

Mr Jeffrey.—After what has been done, I trust I shall be considered as sufficiently discharging my duty in the eyes of the public and of my client, in now saying, that I here close the evidence in his behalf.

Lord Advocate.—*Gentlemen of the Jury*,—After the length of time which you have been called upon to give your attention to this interesting and important case, it will be satisfactory to you and to the Court, that the course which I am now about to pursue, sanctioned, as I trust you will admit it is, by the convictions on my own mind, and supported as it is by the opinion of my learned friend the Solicitor-General, and of the other gentlemen with whom I act, that that course is at least calculated to save you a considerable portion of time in listening to any statement of mine, and that it will probably save some portion of the time of my learned brother who is to address you on the part of the prisoner.

Gentlemen, before I precisely point out what that course is, I trust I shall be forgiven for stating, that, in whatever view this case is looked to by you, or by the country, sure I am that no doubt can arise on the propriety of the present prosecution. It has been, and I trust ever will continue to be, the invariable course when the life of any individual, however low in society, has been taken from him by violence, that the circumstances connected with that crime should form the subject of a criminal investigation before the Criminal Court of this country, and that the person against whom the accusation lies shall have a verdict upon his case

either establishing his guilt, or acquitting of all crime; and if this be a salutary practice in the general case, sure I am you will concur with me that this is a case in which such investigation is eminently required, where an individual has suffered, it certainly must be admitted, by illegal violence, where that individual was in the prime of life, the father of a numerous family, a zealous and active magistrate, a Vice-Lieutenant of a considerable county, a person gifted with talents and qualities alike useful to society, and to endear him to the circle of his private acquaintance. When such a person falls by violence, assuredly it is expedient for the justice of the country that the case should be investigated with minuteness. This, indeed, is right, independent of what is due to the justice of the country,—in justice to that unfortunate family, which has suffered a loss never to be repaired;—right to the unfortunate gentleman at the bar, in order that the whole circumstances of the case may appear before the world, and that the whole guilt he has committed may be known; that its precise extent may be ascertained, or his innocence may be established,—that he may either suffer for the crime he has committed, or receive a verdict of acquittal at your hands for his innocence.

The libel now before you charges the gentleman at the bar with having committed the most heinous offence known to our law, that of deliberate murder, in having, on the day specified, gone out on purpose to fight a duel with Sir Alexander Boswell, at whom he intentionally discharged the contents of a loaded pistol, by which he was killed. My honourable friend who opened this case complained, that the indictment aggravates the case, by stating, that the prisoner fled from justice. Now, for myself, I do regret that the expression in question was used in the indictment. It is, however, right for me to state, that it is the invariable practice to introduce that statement in all cases where an individual has not conformed to the common practice of giving himself up, and being examined judicially. That this gentleman did flee from justice is a fact which this day has been completely proved. I do not, however, mean to say that he absconded in the common sense of the term,—that he did not mean to stand his trial I trust, when you look at the circumstances, though attempts have been made to have it supposed otherwise, it will distinctly appear, that on this occasion there has been every disposition on the part of the public prosecutor to do the gentleman at the bar full justice in bringing him to trial, as soon as he could rightly be brought

to trial; that when the true and real circumstances of the case are known, no ground for imputation on the public prosecutor will be found to exist. It has been stated as the reason given by the Crown counsel at the time why they thought this indictment should not instantly be tried, that the gentleman at the bar ought first to surrender and have undergone a judicial examination. And most certainly, if the common and uniform practice observed in similar cases had been attended to here, this person would not have been brought to trial till he had returned to the country; nay, even advantage might have been taken this day of his attendance to desert this diet, for the purpose of having him examined before being brought to trial.

But that is not the course which has been pursued. I cannot think of detaining you with relating the circumstances that led to any little delay that has taken place. But they are such as to make me feel in my own mind justified for that delay, and to satisfy me, that the gentleman at the bar has been brought to trial as early as he possibly could, consistently with what is due to the justice of the country. I early expressed my anxiety that he should be brought to trial, and sure I am he suffered no hardship, or any thing of which he can complain, in the meantime.

You heard something said of an application made to foreign courts regarding him, as if means for apprehending him abroad had been taken. But there is no ground for that insinuation. No means whatever were adopted to pursue this course; nor has any thing more been done than allowing him the privilege of which he has this day availed himself, of sisting himself at your bar, without one moment's imprisonment. I will not dilate farther on this circumstance; for I am confident, that my learned friends opposite, knowing the case in all its bearings, and knowing the whole circumstances, will not think that there has been any thing done on this side of the bar for which the Crown counsel have any reason to be ashamed. I know it is my own feeling, that I have endeavoured to act in as liberal and fair a manner as has been consistent with my public duty.

Gentlemen, with respect to the charge of murder, it is impossible for me not to state, in the broadest and most decided terms, that that charge, according to every view of the law, has this day been proved most distinctly. It has been proved to you by the testimony of the Noble Earl who was first examined, and of Mr Douglas, who followed him, that a duel did take place on the day libelled between Sir Alex-

ander Boswell and the prisoner at the bar; that the friends of these individuals having had interviews and communications together, Mr Stuart came to the resolution that, unless satisfaction of a certain kind was offered, Sir Alexander Boswell should be called out; that this was followed by certain other proceedings, which were detailed fully in the evidence; and that the matter ended in a meeting, deliberately concerted at Auchtertool, where the unfortunate prisoner now at the bar discharged a loaded pistol at Sir Alexander Boswell, of which it is proved that he died. I will not go into the details of the evidence on these points. These are facts which cannot and will not be denied.

Gentlemen, if this be so, I say, that my duty calls on me to ask you whether any defence of a valid kind has been set up. The defence which was made approaches to the nature of justification, founded upon self-defence; at least this is the technical term in our law under which that defence, if valid to any extent, must be classed; for we know of no other actual justification of an individual committing murder, but the proof that he did so in his own defence. Now, I will not read any law books to you on the subject, but state, without fear of contradiction from my learned friend who is to follow me, that such a plea cannot legally and strictly avail the pannel, under the circumstances which have been proved; and that a person going out deliberately to fight a duel, and killing his antagonist, cannot be allowed to state himself as in those circumstances of self-defence, which entitle him to a verdict of acquittal.

I must own, however, that juries have, and by possibility you may think yourselves entitled not to regard the law in that strict point of view; or at least that you may consider yourselves at liberty to go into the detail of circumstances which led to this unfortunate duel; and, holding yourselves not so much a court of law as a court of honour, determine whether, under all the circumstances, the individual at the bar is to be held as guilty or not. Now, I say that such considerations belong more fitly to a higher tribunal; and your strict duty does not entitle you to go into this investigation. But if you shall think yourselves entitled to go into this discussion, then I do state to you, that I think I discharge my duty in the manner most becoming and fitting, when I say, that I have thought it my duty not merely to bring this prosecution, but to lay it before you, in all its circumstances, as fully as it was in my power. I have

heard with much satisfaction the statement which was made in defence, and all the evidence which has been brought forward in support of it. These are now before you, and you will judge of them without my entering into the circumstances with which they are connected; for I do think it would be a waste of your time, and not fitting in the situation in which I stand, to do this.

I leave the case with you, under the directions which you will receive from the Bench, to aid you in forming your opinion of the evidence produced; and whatever you shall deem it fitting to do on this solemn occasion, the Public Prosecutor will be satisfied; and I am sure your verdict will be satisfactory to the country and to your own consciences. That being my conviction, I consider it my most fit and proper course to leave the case entirely in your own hands.

Mr Jeffrey.—*Gentlemen of the Jury*,—Though I must confess that the anxiety with which I entered this Court today has been very greatly diminished during the progress of the discussions which have now closed, and that it has not been at all increased by the very moderate and reasonable statement, which was such as I confess I expected, and am aware was due, from the Learned Prosecutor, I cannot consent, for the sake of my client, to follow his example, by committing this case at once, and altogether without observation, to your decision: Nor can I entirely discharge from my own mind those feelings of anxiety which the very brief, but pregnant allusion contained in the address you have just heard to the known and solemn authorities of the law, has certainly contributed in some degree to revive.

Before proceeding, however, to trouble you with any observations of my own, I may be allowed to relieve and gratify myself by stating, that there was *one* of those which fell from the Learned Prosecutor, in which I can, with the most perfect cordiality, concur—and that is, that whatever may be, or whatever he thinks ought to be, the issue of this trial, his having brought the case publicly and fully before you and the country is, and ever must be, a source of congratulation to the accused. He desires, certainly, justification at your hands, and he expects it. But, above all, he desires that full disclosure of the truth, for which, if it answered no other end, this public trial by jury ought to be for ever immortal.

Gentlemen, after the character that has been given of the person at the bar, and the evidence that has been laid before you this day, all perfectly harmonious and consistent throughout, as to his general conduct and demeanour, I think I may

say, there are no *specialties* in this case that can justify any alarm on the part of his friends; and that the only point to which those who are entrusted with his defence need now address themselves, is that judicial sanction under which he has been said to lie, and out of the danger of which I think it will not be difficult to induce you to deliver him.

The indictment sets forth, and observe, Gentlemen, your verdict must find that it truly or erroneously sets forth, that the prisoner at the bar *having conceived malice against the late Sir Alexander Boswell*, did, in the furtherance, and for the gratification of that malice, seek out pretexts or occasions to challenge him to fight a duel, and that, on the day mentioned in the indictment, he did *wickedly and maliciously* discharge at him a loaded pistol, for the purpose and with the desire of taking his life, by which pistol his life was undoubtedly sacrificed.

This is the charge.

To this charge he has pleaded Not Guilty; and, at the same time, he, in the beginning of the trial, all but admitted, and now by my means admits, that it is proved that he was the unhappy instrument of the death of that unfortunate individual. His plea of Not Guilty, therefore, which he now repeats, and trusts in with greatly more confidence before the facts were disclosed, of course turns and hinges on this allegation, that though, unluckily, his hand was the instrument of Sir Alexander Boswell's death, he did not kill him *wickedly and maliciously*; that his mind was pure from every spark of malignity, vindictiveness, or rancour; that he acted in this matter from motives totally unconnected with personal animosity; and that he ought now to be considered, not as having committed a great crime, but as having fallen under a great calamity.

I apprehend I need not tell you, what is familiar to all of us who live in the atmosphere of this place, that the essence of all crimes, their criminal quality, consists in the motive and intention from which they proceed, and that there is no act, not even that of bereaving a fellow-creature intentionally of life, that has in it any criminal character arising from its merely physical description, of being injurious or painful to another. The guilt, and the whole guilt, of any act, so far as it can be described by its external characters, consists in the criminal and culpable motives and intentions from which it proceeds.

It is only, therefore, rational and accountable creatures, who are presumed to be guided in all their important acts by reflection and choice, that can be called upon to answer for their conduct; and they answer, not for the acts themselves, but for

the innocence of the motives or objects which they had in view in performing them.

Now, Gentlemen, after all you have heard, while these propositions neither are nor can be disputed, if it were enough to support the plea in which we insist, that you are satisfied that the unfortunate gentleman at the bar stands in the predicament I have described—that you are all of you convinced that he went to the place of fatal rencounter without one atom of malice, hatred, or vengeance in his heart, and that he was actuated throughout, by motives not only not savouring of such feelings, but in their true character most directly opposed to them,—if this were all I had to do, I should then indeed be inclined to follow the example that has been set, and to leave you to the unassisted consideration of the evidence, which has all had but one character, and all but one tendency

But, before I can refer it to this evidence, it seems I must satisfy you that I have a right to desire you to consider it. Before I enter on my defence, I must persuade you that defence is admissible.

We have been told, and certainly without any reference to authorities—which, however, I do not pretend do not exist—in general and comprehensive terms, that duelling, in any case, is an irrational, and barbarous, and pernicious practice; and that he who, for any cause, is unfortunate enough to take the life of another in a duel, is necessarily guilty of the aggravated charge of Murder.

I am not here to pass encomiums, or to enter an apology for the practice in question; and yet I may be permitted to remind you, that on the occasions, almost the only ones, when we are called to consider the defences and views of parties who have engaged in such a practice, we are not generally in a situation to consider it very fairly. It is only when a lamentable accident has occurred, when precious and regretted blood has been shed, and when all our better feelings of sympathy and instinctive disapprobation of the actual violence that has occasioned the calamity are roused, that we are called upon to consider the nature of this extraordinary institution or practice of modern times. The actual evils of duelling are foremost and uppermost in our thoughts; but the evils which it tends to *prevent* entirely escape our consideration. It ought, therefore, in fairness to be remembered, that however awkward, however imperfect, however unequal and immoral a remedy it may appear, yet that, in point of historical fact, it has come as a corrective to greater immoralities, and a preventive of greater crimes. It is well known to all who

are versed in history that, in point of fact, the practice of honourable duelling superseded the guilt and atrocity of private assassination; and that to this practice, pregnant as it often is with calamity and suffering in every form, we are not only indebted for the polish and refinement that belong to the members of our upper society, but for,—what is a great deal more valuable,—not only the high and general esteem in which courage and intrepidity are held,—but also for the universal diffusion of fairness, manliness, forbearance, and handsome conduct among all the Gentlemen of the land. The practice may indeed lead to the same results, in one point of view, I mean in relation to bodily suffering, to which the unlimited licence which it has prevented and superseded sometimes led; but the dispositions of mind which it creates, for the most part, and according to all modern experience, are totally the reverse. Even those who are most prone thus to expose their own lives and those of others, are but rarely chargeable with any cruelty, ferocity, or quarrelsome disposition; and the truth undoubtedly is, that the practice itself has encouraged the growth of humanity, forbearance, generosity of sentiment, and the greatest caution and mildness of demeanour.

That it affords a remedy for these crimes, and operates as a preventive to these atrocities, the history of those nations, where it prevails most and least, presents an obvious and conclusive testimony. In Spain, Portugal, and Italy, assassinations are daily occurring, poisonings, stabbings, the basest and most cruel murders. In those other countries again, where duelling is an occasional but rare occurrence, and where it is called in only as an appropriate remedy for those affronts, vexations, and griefs, for which the law gives no redress, such atrocities are unheard of. In submitting it as matter of consideration for you as a general topic, whether a severe punishment of the survivor in duels, and the suppression of the practice, would not lead to worse consequences, I trust, that in this country it would not lead to assassinations, but it certainly would lead to private and secret meetings held without witnesses, and without the means afforded to the parties of guarding against unfairness, or, what is as distressing and painful, the suspicion of it where it did not exist.

But I am not disposed to enlarge on this topic, or to urge it upon you as a necessary ground of my defence. All I say, or wish you to remember, is *a fact* which I believe no person will be bold enough to contradict, and that is, that however irrational,—however immoral,—how-

ever objectionable, in many points of view, the practice of duelling may be in itself, it is a practice so established, and the necessity of which is so enforced by sanctions which no man can be expected to resist or defy, as to render, in certain circumstances, such an encounter inevitable to any gentleman. The unfortunate individual, who, in obedience to that sanction, exposes his own life, and the life of another, is not answerable, I submit to you, for the justness or reasonableness of the institution itself. I have brought with me today a number of books, in which authors of the severest and strictest morality, and of the deepest sense of religion, have given the high sanction of their authority to the lawfulness of such an act, some of them tracing it from its origin to its consequences, and others in a more general strain, justifying it on argument and reason, and with authority far greater than the suggestions I have thrown out at all indicate.

I shall not trouble you now with going into many, or hardly any of these statements; at the same time, that I may not appear to be speaking entirely from my own authority, I shall take the liberty of submitting a very few lines, to show how the practice has been viewed by authors of the highest names, and of the severest principles in our kingdom.

I refer you, first, to a work universally known, and which will carry down the name of the father of Sir Alexander Boswell to the latest period in the annals of English literature. I mean his memoirs of his illustrious friend, Dr Johnson, a man certainly of the sternest morality, and most profound sense of religion, and who joined to both those high and severe attributes, perhaps the most vigorous understanding that was ever brought to the consideration of any moral question. It happens that Mr Boswell himself concurred in the opinions which he reports as those of his illustrious friend,—and from what we have heard to-day, it appears that his son inherited these opinions. I shall not trouble you with many words, but with one passage where this topic is started, and Boswell records Dr Johnson's opinion. "I started the question, whether duelling was consistent with moral duty? The brave old general (General Oglethorpe) fired at this, and said, with a lofty air, 'Undoubtedly, a man has a right to defend his honour.' *(Goldsmith, turning to me,)* 'I ask you, Sir, what would you do if you were affronted?' I answered, 'I should think it necessary to fight.' 'Why then, (replied Goldsmith,) that solves the question.' *Johnson.* 'No, Sir, it does not solve

the question. It does not follow, that what a man would do, is therefore right." *

The sage begins, you see, with disputing the opinion of the defender of duelling; and, therefore, if he had begun this controversy with that love of contradiction which often influenced him, he probably would have gone on to show that he was wrong; but, continues Boswell, "I said I wished to have it settled, whether duelling was contrary to the laws of Christianity. Johnson immediately entered on the subject, and treated it in a masterly manner, and so far as I have been able to recollect, his thoughts were these:—Sir, As men become in a high degree refined, various causes of offence arise, which are considered to be of such importance, that life must be staked to atone for them, though in reality they are not so. A body that has received a very fine polish may be easily hurt. Before men arrive at this artificial refinement, if one tells his neighbour he lies, his neighbour tells him he lies; if one gives his neighbour a blow, his neighbour gives him a blow; but in a state of highly polished society, an affront is held to be a serious injury. It must therefore be resented, or rather a duel must be fought upon it, as men have agreed to banish from their society one who puts up with an affront without fighting a duel. Now, Sir, it is never unlawful to fight in self-defence. He, then, who fights a duel, does not fight from passion against his antagonist, but out of self-defence, to avert the stigma of the world, and to prevent himself from being driven from society. I could wish there was not that superfluity of refinement; *but while such notions prevail, no doubt a man may lawfully fight a duel.*

"Let it be remembered, that this justification is applicable only to a person who receives an affront. All mankind must condemn the aggressor."

The topic was afterwards resumed, and then he says, p. 232, "He (Dr Johnson) this day again defended duelling, and put his argument upon what I have ever thought the most solid basis, that if public war be allowed to be consistent with morality, private war must be equally so. Indeed, we may observe what strained arguments are used to reconcile war with the Christian religion, but, in my opinion, it is exceeding clear, that duelling having better reasons for its barbarous violence, is more justifiable than war, in which thousands go forth without any cause of personal quarrel, and massacre each other."

* *Boswell's Life of Johnson*, 5th Edit. 1807, Vol. II. p. 182.

On another occasion, on which both he and his auditor must have been prepossessed against the practice, the same doctrine is uniformly and consistently maintained. Boswell says, (Id. Vol. IV. p. 223,) "Having next day gone to Mr Burke's seat in the country, from whence I was recalled by an express, that a near relation of mine had killed his antagonist in a duel, and was himself dangerously wounded, I saw little of Dr Johnson till Monday, (April 28,) when I spent a considerable part of the day with him, and introduced the subject, which then chiefly occupied my mind. *Johnson.* 'I do not see, Sir, that fighting is forbidden in Scripture; I see revenge forbidden, but not self-defence.' *Boswell.* 'The Quakers say it is, Unto him that smiteth thee on one cheek, offer him also the other.' *Johnson.* 'But stay, Sir, the text is meant only to have the effect of moderating passion; it is plain that we are not to take it in a literal sense. We see this from the context, where there are other recommendations, which I warrant you the Quaker will not take literally, as, for instance, From him that would borrow of thee, turn thou not away. Let a man whose credit is bad come to a Quaker, and say, 'Well, Sir, lend me a hundred pounds,' he'll find him as unwilling as any other man. No, Sir, a man *may shed the blood of a man who invades his character*, as he may shoot him who attempts to break into his house."

There is another author of equal eminence, and equal purity of moral doctrine, to whom also I think it right transiently to refer; and I do it the rather, because this learned person not only held, for a very long course of years, the situation of Professor of Morals in this University, but was himself of the clerical profession originally, and not only, therefore, by his habits and virtues, but by the training of his early life, must have had fully in view those sanctions of high principle, which religion has superadded to ordinary moral obligation. I need hardly say, that I mean the late Dr Adam Ferguson, whose writings are well known, and who, in the principles of morality, which he gave to the world as a summary of those views, by which he trained the youth of this land to generous and gentle lives, has treated this subject with the freedom and caution with which it ought to be treated, and has come to the same result with his brother moralist in the adjoining country. (*Ferguson's Lectures on Moral and Political Science*, Vol. II. p. 280, *et seq.*) He says what undoubtedly is true, "That a woman who is forcibly attacked in her chastity, or a man who is put to the trial of personal estimation, or honour, may receive an injury, which

the utmost power of the magistrate *cannot afterwards repair*. *An exception* is accordingly admitted in favour of the private right of defence on such occasions.

" Among these modes of attack, there is a singular species of injury, owing its effect to the caprice of manners in modern times; but of which the effect is extremely severe and injurious, not susceptible of any legal measurement, nor reparable by all the power of the magistrate.

" In consequence of this singular caprice, altogether unknown to the celebrated nations of antiquity, not only aspersions of character, but any single term of reproach, or gesture of insult, so far impairs the estimation or credit of the person who suffers them, that if the breach be not repaired, in the way which caprice also directs, he becomes an outcast from the society, in which his condition depends on the esteem inwhich he is held. Applications to the courts of justice, for reparation, *would only increase the dishonour*. False aspersions may be removed by the clearest evidence of truth; but this would not remove the dishonour of having suffered them to be made. An accusation may be known to be true or false; its effect, however, in this case, does not depend upon the degree in which it is believed, but upon the degree of tameness with which it is received. Even calumny hurts, not by the imputation of any criminal charge, but rather by the imputation of cowardice, implied in the manner of receiving it; and the defence which caprice has provided for this mode of attack, is a display of courage, not a refutation of any false accusation. The accusation may be true,—but the courageous vindicates his honour. The accusation may be false,—but the coward is overwhelmed with disgrace. Even the injured is denied the use of stratagem or surprise in his own defence. He *must* meet his antagonist, however injurious, upon equal terms; and, if he would preserve his honour, must pass throngh the hazard of a single combat for that purpose. His character for integrity may be blasted or entire, but his estimation, in point of honour, is independent of either condition.

" In this example, the deviation from reason is monstrous, —but the dignity of justice is made to stoop to the caprice of fashion; and so long as the private injury is suffered to have its effect, the petulance or folly of one person may drive another from his place in society; so long as the magistrate cannot preserve the citizen in his state, *so long the injured citizen must be allowed to defend himself, and to adopt the only means which are effectual for that purpose.*

"To reform this abuse has been justly considered as an object of great importance in the policy of modern nations. But attempts to this purpose have begun, perhaps, *at the wrong end*, by denunciations of severity against those who, finding their honour invaded, take the ordinary way of preventing or repairing the wrong with which they are attacked. If men are, by vulgar caprice, made accessible to an injury of the most serious nature—to an injury which a magistrate cannot repair, it is *by no means just* to restrain them from the only means of defence that is left in their power. This being evident to the general sense of mankind, the only effect of severities denounced by the law, in most countries, against the injured, as well as the aggressor, has been to oblige courts of justice to fall upon measures to evade the rigour of that very law they are required to apply."

It is hardly necessary for me to pursue this quotation farther.

I have read you the opinion of a Philosopher and a Clergyman. I will now read you the opinion of a Philosopher, a Lawyer, and *a Judge*, one most eminent too in all these characters, and who, for a long period, occupied the seat of justice in this country, and in the very Court in which we now are assembled, and will continue to adorn and improve its jurisprudence as long as the Courts or Law of Scotland shall remain established. I mean Lord Kames, who, in one of his most discursive and elaborate works, has given, by far, the most decided opinion of any to which I have yet alluded. I quote from the Sketches of the History of Man, (*Kames' Sketches*, Vol. I. p. 335.) "Is duelling a crime by the law of nature? A distinction is necessary.—If two men, bent to destroy each of them the other, meet armed, and one or both be slain, the act is highly criminal: It is murder in the strictest sense of the word.—If they appoint time and place to execute their murderous purpose, such agreement will not be more innocent than an agreement among a band of robbers to attack every passenger; they will be abhorred as unfit for civil society. But a duel, which an affront forces a man upon, for vindicating his honour, when no satisfaction is offered, or no proper satisfaction, *is very different. I cannot see that the person affronted is guilty of any crime*; and if the person who gave the affront have offered what he thinks full satisfaction, *I see no crime on either side.* The parties have agreed to decide their quarrel in the honourable way, and no other person is hurt. If it be urged that duelling is a crime against

the state, which is interested in the lives of its subjects, I answer, that individuals are entitled to be protected by the state; but that if two men, craving that protection, agree to end the dispute by single combat, the state has no concern. There is nothing inconsistent with the laws of society, that men, in an affair of honour, should reserve the privilege of a duel; and, for that reason, the privilege may justly be understood as reserved by every man when he enters into society. I admit that the using the privilege on every slight occasion cannot be too much discouraged; but such discouragement, if duelling be not criminal, belongs to a court of police, not to a court of law.—What then shall be said of our statutes?" —Observe, he speaks of our *statute law alone*; and considers that there is no crime, unless by means of it.—" What then shall be said of our statutes which punish with death and confiscation of moveables, those who fight a single combat without the King's licence; and which punish even the giving or accepting a challenge with banishment, and confiscation of moveables? When a man thinks his honour at stake, fear of death will not deter him from seeking redress; nor is an alternative left him, as the bearing a gross affront is highly dishonourable in the opinion of all the world. Have we not instances without number, of men adhering to the supposed orthodoxy of their religious tenets, unawed by flames and gibbets? How absurd then is it in our legislature to punish a man for doing what is indispensable, if he wish to avoid contempt? Laws that contradict honest principles, or even honest prejudices, never are effectual: *nature revolts against them.* And it is believed, that these statutes have never been effectual in any one instance, unless, perhaps to furnish an excuse for declining a single combat."

With these authorities, and with the inward authority of the sense and obvious reason which they convey, I think I may be allowed to say, that I was startled at the very broad proposition on which the learned prosecutor rests his claim for a verdict of Guilty, and of Murder too, on the present occasion. He does all but admit indeed, that if there be *any* case in which killing in a duel is not murder, and not even criminal, it is the case now before you; and his proposition amounts, therefore, to this, that, in point of fact, a man who, in any given or imaginable situation, shall have the misfortune to kill his antagonist in a duel, shall be adjudged guilty of the crime of murder. I must hold him as stating this of the most favourable case that can be suggested, for I will not do the present case the injustice of supposing that any

can be imagined stronger—or so strong. But take any case —suppose an officer of high rank, at the head of his regiment, beaten, kicked, spit on, reviled, and trampled on, by a man of his own condition, and of greater bodily strength, all demands of apology or satisfactory explanation rejected with contumely, reduced, therefore, to the alternative of choosing between being expelled from his profession, hooted and pointed at in society, or giving a meeting to his enemy: But if he does give a meeting, and deploring the necessity, while discharging from his mind all bitter and malignant feeling, but bound to preserve his life, and that which renders life precious—he calls this person to the field, and there has the misfortune to kill him —that man, we are told, is to be suspended on a gibbet as a murderer! Why were such a doctrine precisely enacted by the Legislature,—did those statutes still subsist on which alone the Learned Judge, whom I have quoted, fastens the reproach of teaching such a doctrine?—even then I would call upon you to disregard them —I would say to you with truth, that they had been abrogated by a contrary usage, and by that change of times and manners, which we know, in this country, can effectually wipe away all penal enactments, whether formally repealed or not.

I do not wish, nor do I think it necessary in this case to go into details or arguments of a debateable description; but I cannot help, in passing, venturing to say to you, in broad and general terms, that I conceive the criminal law of this happy country to consist, not in the barbarous and implacable severity of its antiquated statutes, nor in the severe and impracticable doctrines that may still retain their places in our books of law, even of the greatest authority; nor even, I say it with great submission, in the *dicta* that may fall from the lips of those high and stern magistrates, the Judges of the land, who are bound to assert all the severity of the code which they are appointed to uphold, and in their places to countenance or sanction no relaxation, however hard and inoperative in the correction of crimes these may be; but, I say, the criminal law of this happy country consists in the authorized and approved *practice* of its courts of criminal law,—and is ultimately embodied in the popular, admired, and consistent verdicts of juries. I am far from saying that juries have any dispensing power over the law; I am far from saying, though that has been said, that they have a rightful power to disappoint the law, where its sanctions have been plainly incurred. But, I say, that where the verdicts of juries have met, for a course of

time, with the general approbation of the community, and the sanction of the Courts under whose authority they are pronounced,—when they go on in an uniform series, and all point one way, they then make and constitute that real and practical law on which all the subjects of the land are entitled to rely, and on the administration of which the people, with the greatest security, may depend. And, in truth, it is a proud and fortunate circumstance for this country, that such an institution as a jury should exist, with power occasionally to temper the severity of that law, which a court of another description would too inflexibly enforce; and thus silently to abrogate statutes, or maxims of common law, that the course of the times, the progress of manners, the disappearance of some crimes, and the rise of others, may have rendered inapplicable and unnecessary; that such indications of the temper of the people, that such manifestations of the feelings and views of those who are selected from among the people to represent it, and decide on the fate of their brethren, should be allowed, by means of refusal, to guide the Legislature to the repeal of particular laws, or the enactment of new ones with mitigated penalties.

And, Gentlemen, I perceive that, in a neighbouring country, where the criminal law is almost entirely statutory, and the authority and construction of it, therefore, greatly more precise than with us, where the whole code is more of the nature of common law, this power of juries is not only recognized as existing, and winked at by Judges, but is subscribed to by them, and applauded not only by the country at large, among whom these juries have never been known to have lost their credit, but even by the Judges themselves, from whose *dicta* they occasionally dissent.

Why, Gentlemen, there is one familiar instance of this, which has lately and frequently been brought under the view of the Courts, and of Parliament,—I mean the difficulty, or rather the impossibility, of finding juries to execute laws which have become too severe for the age. I mean particularly that common topic of complaint, the unreasonable severity of making stealing to a very small amount a capital offence, while small occasional lowering of the value of the articles stolen would reduce the crime to what is called a clergyable or venial felony. In these cases, it has been often noticed and complained of, that juries, in the face of the most undoubted evidence, are constantly in the practice, when obliged to convict, of bringing in the article as not worth the tenth part of its real value. The late Sir Samuel Ro-

milly, in his well known discourse on the criminal law, gives a vast variety of such cases where things were proved to have been sold by the thief, for ten, twelve, and sixteen guineas, and a Jury has found them to be worth only 39s.; and there is one instance where in a theft of a ten pound note, the Jury found the prisoner guilty of stealing to the amount of 39s. only; and one Jury is mentioned, before whom two men who were found guilty conjunctly of the same theft, were yet convicted variously, one being found guilty of stealing to the amount of 39s. and the other of 50s. which astonished the Judge, till, on inquiry, he found that the man found guilty of stealing to the amount of 50s. had formerly been before a number of that jury at a Quarter-sessions for other offences, and was, therefore, thought deserving the higher penalty of the law, while the other was for the first time before them, and was, therefore, convicted for the lower.

But these practices, irregular as they are, have received an extraordinary sanction, in the way they are spoken of, by the great and most popular writer on the law of England—I mean Blackstone. He says, "It is true, that the mercy of juries will often make them strain a point, and bring in larceny to be under the value of twelvepence, when it is really of much greater value; but this, though evidently justifiable and proper, when it only reduces the present nominal value of money to the ancient standard, is otherwise a kind of *pious* perjury, and does not at all excuse our common law in this respect from the imputation of severity, but rather strongly confesses the charge." (*Blackstone's Com.* Vol. IV. p. 239.)

Now, this is the language of a Judge and a master of the law, of one of its greatest oracles and brightest ornaments; and he tells you, that this practice is a pious perjury! recognizing it as quite familiar, done daily with the acquiescence of courts, and neither entailing reproach on juries among their neighbours, nor exposing them to the censure of their legal superiors.

He calls it a pious perjury! as we say a pious fraud, meaning something commendable on the whole, though not in all its bearings, conformable to strict precept.

I might quote instances of this kind in our own practice. We had once a statute, Gentlemen, now abrogated, by which juries were tied down in distinct terms to convict a person of murder, whether they thought him guilty or not, provided certain presumptions of guilt, which the Legislature had chosen, when found together, to take as absolute

proof, should be found to concur. I mean the statute of William and Mary regarding child-murder, declaring that if it should be proved, that a woman had not revealed her pregnancy, or called in help at the birth, and the child was afterwards missing, these circumstances concurring, should, in all cases, be takenas proof of child-murder.

Many convictions were got under this statute; but as a number of cases arose, where, from false modesty, accident, or otherwise, all these supposed infallible criteria concurred, without the guilt of murder having existed, Juries came to boggle at such an enactment, and, accordingly, it was abrogated by their uniform refusal to execute it. All our late writers distinctly say, that of late years no convictions could be obtained under that statute. Nay, I remember myself, in the early part of my practice, of two cases where the statute was libelled on, in one of which the jury stated, that they would not convict on the statute, and found the prisoner not guilty, and the judge approved of their verdict. And in another case, I remember a Depute-Advocate was reproved for bringing such a case to trial, and the judge told him plainly, that if he did proceed on that statute, he would take care there should be an acquittal.

Accordingly, that statute, by an act of laudable and praiseworthy contumacy on the part of juries, was abrogated in actual practice, before it was repealed by a recent act of the Legislature, which declared these circumstances to infer a simple felony, punishable with imprisonment.

But though I refer to these cases to let you understand what I apprehend the law, and the practice of that law, actually to be, I am far from saying that they afford a precedent which is in every case, or lightly to be followed; for though a jury has been commended *for* finding a thing which is worth many pounds, of the value only of 39s., nay, for even finding, as in the case of the accession to the same crime, that it was, and that it was not of a certain value, I cannot but acknowledge, that the frequent assumption of this extraordinary and perilous power, by which, if exerted, except in extraordinary cases, the stability of the law would be gone, is by no means to be approved. But I do say, that even this is within the constitutional power of juries, when connived at, or openly recognised by high judicial authority; and I state this case of extraordinary power in order to show you that what I now contend for falls far within its limits. I do not require you to find that Sir Alexander Boswell did not fall by the hands of the prisoner at the bar, but

only that he did not fall by his malice.—I call upon you to give in a verdict of no untruth, directly or by implication. I call upon you, and I think I cannot call in vain, that you will not allow your verdict to be any thing but truth; and I tell you, that you cannot be compelled to say that the prisoner *wickedly and maliciously* slew that unfortunate gentleman; if you sincerely think he did not,—if you are satisfied that he slew him without malice, anger, or hatred, in the rencounter;—in short, that the very reverse of all these feelings burned in his bosom towards the unfortunate gentleman at his death, before his death, and after his death.

The true point, then, is, Whether there is evidence that he killed him maliciously? I need not read authorities to you upon this subject. Without multiplying these, I have marked a passage in Mr Hume's work, in which he describes that which forms the essence of all crimes, and to which alone the evidence in all prosecutions must go. He begins (chapter 1st) with the explanation of the nature 'of that *dole*, as it is called,—that corrupt and evil intention which is essential (so the light of nature teaches, and so all authorities have said) to the guilt of any crime. Now, in delivering this precept, those authorities are not to be understood in this sense, as if it were always necessary for the prosecutor to bring evidence of an intention to do the very thing that has been done, and to do it out of enmity to the individual who has been injured. In this more favourable sense to the prisoner, the maxim cannot be received into the law, for it would screen many great offenders from the punishment of their transgressions. And I think it is only true in this looser and more general, but a practical and a reasonable sense, in which an English author of the first judgment in those matters (Judge Forster) has explained it; that *the act must be attended with such circumstances as indicate a corrupt and malignant disposition; a heart contemptuous of order, and regardless of social duty.*"

This, Gentlemen, is what you must find proved before you can find any one guilty of a crime. That which renders any action a crime is, that it proceeded from an illaudable, improper, criminal, malignant design.

Now, with great submission, I take this, in every case, to be *a part of the evidence*, and as such, competent and proper for the determination of a jury,—assisted, no doubt, by the opinions of the learned persons who preside in the Court, but only taking these as opinions to aid them in forming their own; so that, on a view of all the evidence,

the jury is to say whether they are convinced that the prisoner is guilty or not guilty of that malignant purpose or contemptuous disregard of law and order, which forms the undoubted essence of every crime.

It is no doubt true, that, in our law books, it is laid down, that killing in a duel, however fairly that duel may have been conducted, is and ought to be considered as murder, and there are two reasons to explain how this, I must say; too unqualified proposition, has been allowed to stand in our books of authority. In the first place, it is derived from a period of society, when our statutory law did make such a declaration; and one of the causes of its severity was, that the manners and customs of the times were such as to justify the enactment. For it is well known to every one, that there was a period when the abuse of duelling became a monstrous and flagrant evil, and when, out of mere wantonness, vanity, and folly, the lives of the most valuable citizens were sacrificed in consequence of its prevalence, for causes equally fantastical and barbarous. I believe it is mentioned somewhere, that, in the short reign of Henry IV. of France, no fewer than 4000 gentlemen were slain in duels; and it is quite well known, that, during the sixteenth and seventeenth centuries, the same practice prevailed to an intolerable excess in these islands. That was the date of the law in question; and the history of the origin of these *dicta* of our lawyers is still preserved. How they have been preserved long after the lapse of the circumstances by which they at first were justified or required, is a question which probably will not require much explanation to those who know how tenacious lawyers and law-writers are of ancient maxims, and even of ancient prejudices;—how unwilling lawyers, of every degree, are to acknowledge the imperfection of that law, which it is a part of their duty to uphold and magnify; how willing to say, that recourse to a Court of law supersedes and renders unnecessary any other appeal; and, therefore, on that rash and false assumption, to build the conclusion, that any other appeal, if attended with danger, or terminating in death, must be criminal and murderous. Nor should it be forgotten, that it may with some reason be maintained, that the most severe sanctions of the law should still be held out for the terror of offenders,—that all such killing should be taken, in the first place, for murder; that the act should be held as *prima facie* illegal, and should have the effect of putting him who commits it to a

proof of the circumstances which make his case an exception from the ordinary rule.

I have stated this rather as an apology for the law, than a justification of it. For I will take leave to say, that it would be the greatest libel on the law, to hold that, in consequence, not of any statute declaring duelling a capital offence, for there is no longer any such statute, but, on the common law of the land, *all* killing in a duel shall be regarded as murder; in other words, that the crime of maliciously and treacherously killing another person shall be predicated of all those who kill in a duel, although there is no appearance of malice, or of any improper motive whatever. No opinions, no law, no rule of practice, no human authority, I say with confidence, can either compel or justify a jury in finding a man guilty of killing maliciously, who is proved not to have had any malice,—not to have had any bad motive, though his conduct has been sifted to the uttermost It would be, of all preposterous notions, the most preposterous, and of all absurdities the most extreme, to say, that the law requires a jury to save themselves from perjury, by perjuring themselves to convict the innocent! You are bound, it is said, to find the prisoner guilty of maliciously killing. But I say that if you think he did *not* kill maliciously, you are plainly bound to acquit him; and that *you* would be guilty both of murder and perjury if you did otherwise.* It

* This argument might be put in a more technical, and perhaps a clearer, though less popular way, as follows. The essence of all crimes being the *dole*, or *malus animus*, from which they proceed, it is obvious that when we say that all killing in a duel is murder, we can mean only that the circumstances of deliberate appointment, and the intentional use of deadly weapons, are sufficient *indicia* from which to infer the existence of such *dole*, or malice. But the question, of what *inducia* shall be sufficient, in any case, to establish the existence of a criminal purpose, is plainly a *question of evidence*; and as such must, *ex necessitate*, be within the province of the jury. The Court may give it as their opinion, generally, that the concurrence of such *indicia* raises a presumption of malice,—but whether such malice is actually proved in any particular case, it must always be for the jury to determine: And to fix absolutely, and *ab ante*, that, upon proof of such *indicia*, the jury *must* necessarily find the malice proved, would just be doing, on this branch of the common law charge of murder, what the statute of William and Mary was held, very oppressively and unjustly to have done as to the charge of child-murder under that act. It is obvious, also, that to hold any such doctrine to be a fixed and binding part of the law, would be substantially to remove from the jury the cognisance, not only of the general guilt or innocence of the accused, but also of the most important part of the *evidence* by which that was to be determined. Consistently with that doctrine, indeed, a jury ought not in any such case to find the prisoner guilty, or not guilty; but should be limited to find merely that

is necessarily a matter of *evidence*, whether a prisoner has contracted the guilt of preconceived malice, and murder ensuing from it, or whether he has only incurred the involuntary and inevitable misfortune of taking away the life of another person, against whom he had no malice; and that, in order to render his own life tolerable, and to protect that state in society which he held, and his family, character, and name, —which a man must always be entitled to protect, where, by the fault of another, they have been endangered, at the hazard and at the expence of that party's life.

Nor is this new law. The Prosecutor, indeed, has told you, that life is so precious, that it is not to be lightly invaded, that no notion of violated honour, that no gratification or soothing of wounded vanity, can justify the taking it away; and he has gone so far as to tell you, that there is no ground on which deliberate killing can be justified, except

it was proved or not proved that he killed another in a duel,—for this is the only matter upon which, according to this system, they can possibly have any right to decide.

The doctrine of the prosecutor, indeed, leads obviously to the same undue limitation of the powers of the jury in cases of this kind, as was long maintained in cases of all kinds by the practice of pronouncing *special interlocutors of relevancy*. For if effect be given to the supposed maxim of law, that *all* killing in duels is necessarily murder, the result must obviously be the same as if, in every charge of murder in such circumstances, the Court had found specially, that the fact of the pannel having killed the defunct in a duel, *was, per se*, relevant to infer the guilt of murder, had repelled all the defences of the pannel that did not resolve into a denial of the killing in a duel, and remitted the libel, as found relevant, to the knowledge of an assize, with instructions to confine themselves in their verdict to the fact of such killing only. If such a deliverance would be contrary to the rights of the jury, and of the prisoner, which no one it is supposed will now dispute, it is difficult to see how the doctrine of the prosecutor can be saved from the same imputation. If the law be absolutely and clearly, as he says it is, it is plain that the enforcement of it would lead infallibly to the same results with the interlocutor that we have imagined. The only difference between the exploded practice and the present would be, that the law, which certainly *ought* to be enforced, if it ought to be recognized as law at all, *was* enforced by such interlocutors, and may be evaded and disappointed by our modern forms of proceeding. It is humbly conceived, however, that the maxim relied on by the prosecutor is not a part of the law by which a jury can be bound, but the result merely of the traditionary opinions of judges on the weight due to certain *indicia* of malice or criminal purpose, the true value and effect of which it is the right and the duty of the jury to determine in every particular case. To hold otherwise, would be to hold that it was equivalent to a *standing special interlocutor of relevancy* in every case of killing in a duel,—and that, in every such case, the jury were bound to act under the implied limitation of such an interlocutor as we have above imagined.

that of self-defence, by which he means, in defence of our life, sacrificing the life of another.

Gentlemen, this is not the law. A man may deliberately and intentionally kill in defence of his own life undoubtedly; but he may also deliberately kill in defence of his property, where no personal violence is meditated—a woman may deliberately kill in defence of her chastity—a soldier may deliberately kill in defence of his post—a common sentry placed upon guard at the door of a field officer;—nay farther, a common citizen may deliberately kill in order to prevent a suspected criminal from making his escape, or to prevent a rescue. The cases, indeed, are numerous, in which our law recognizes the deliberate sacrifice for life—for the preservation of certain rights; but there are other cases, besides those of the character now mentioned, which seem to afford a direct legal warrant for putting life to hazard. This also may be done for the protection of the person from supposed or eventual danger; nay, even of property from probable invasion or destruction. Now, will any man say that there can be reason in that law which recognizes my right to shoot at a person who is carrying away an empty box, or even a purse full of gold—take it any way you please—and yet holds that he may not lawfully kill for the preservation, not of a pitiful portion of useless wealth, but for the preservation of all that renders wealth, society, and existence itself tolerable; and this too, where the person sacrificed can be shown to have been, in some degree, in the wrong?

If a person comes to the door of a post-chaise, presents his pistol, and asks your money, you may lawfully shoot him—you may lawfully shoot him, if you act upon a reasonable belief of danger. Even if his pistol should turn out not to be loaded, and so it appears that he never intended to shoot you, still your shooting is lawful. If you see a person packing up your property, or breaking into your house, and carrying it away, you may lawfully shoot him. Why?—just because you are entitled to say, I value more the security of my property, even when placed in unreal danger, than the life of the person who has put himself in opposition to my rights, such as they are. But, if a person has done that which has placed me in the dilemma of either shooting at him, or of living as an outcast from society—of being exposed to all manner of insults and contumelies—of being excluded from all honourable pursuits and professions—shrunk from by my ancient friends—the cause of blushing to

my relations, and sorrow to my children—the stain of an honourable name, and a hopeless outcast, and exile from society—without hope, means, or chance of restoration—if, I say, a man, by an act which is unlawful in itself, has placed me in that situation, can it be said, there being no malice in my heart, no means of defending my rights but this, no possibility of my subsisting on the earth without scorn, and all this by the unlawful act of another,—I ask you, if, under these circumstances, I do not take my enemy off by assassination, but merely expose his life to the same risk as my own, and that, perhaps, with many chances against me, and he fall,—is it possible that the law, which deals so leniently with other slaughters, should call that a murder? I submit to you, that this would be a proposition altogether monstrous. It is fortunately one which will now find neither patrons nor protection in any quarter.

I do not say that all duels, if fairly fought, must save the person slaying from the consequences of unlawful slaughter, or even of murder. On the contrary, I admit that, though duels fortunately are more rare than they were 100 years ago, and though I trust that a great proportion of them now proceed on justifiable grounds, it still is much to be feared, that, if an unlimited licence were given to them, and if the ordeal of a sifting trial did not await the survivor, there might be instances of abuses, such as formerly existed, and were repressed by severe statutes. I would by no means place my cause on this footing. I freely admit that there is a heavy presumption against that man by whom blood is shed. I admit that I would come slowly to the conclusion, that blood had been shed with innocence; and I ask no more than this, that I should be entitled to look to the causes of quarrel, and not be judged by dry maxims from books. I ask no more than that you would look to the practice of the times, to the recent proceedings of courts of law; and, in every case, inquire whether you find, from the nature of the act, as proved, any indications of that malignant spirit, and of those inexcusable passions, without which, I say, there can be no crime,—without which, where life is lost, there can undoubtedly be no murder.

Accordingly, Gentlemen, I find that the course of practice, ever since the real evil of duelling abated, has been exactly conformable to what I think you must feel already, not only justifies you, but lays you under the necessity of inquiring what is the vindication in the present instance of the party accused. I have already mentioned that, in a short

reign in France, 4000 gentlemen are said to have fallen in duelling. It is a happy and a delightful contrast, and vindicates and explains the change of our statutory law, and decisions, that is to be found in the more recent periods of our history, when I tell you that, in the longest reign almost on record, that of the late Sovereign of these kingdoms, there were only between 60 and 70 persons reckoned to have fallen in Great Britain,—I believe I may say in Great Britain and Ireland, in duels. I speak from a book perhaps of no great authority; but which, I believe, is pretty correct in that general statement; and by which it appears that, in all that time, nearly 60 years, about 170 duels were fought, *i. e.* 340 persons were engaged in such combats, and out of these between 60 and 70 were slain. Now, the first remark on this statement is, that there do not appear to have been more, in all, than between 18 and 20 trials on account of these affairs. In by far the greater number of cases, even though thus of a capital nature, the law did not think it necessary even to bring the survivor to trial, the event having been so plainly and notoriously justifiable and inevitable. Of these 18 or 20 trials, too, you will therefore understand that they include all the bad and doubtful cases, and such as are to be considered the worst; perhaps one or two very bad cases may be supposed to have escaped. Now, the first remarkable thing is, that, in all these instances, there were just two, I think, or at most three capital convictions, and these are cases which strengthen the argument, and give one a notion of the sort of practices against which the ancient severity of the law against duelling was probably directed.

One, and by far the most palliated, was that in which a countryman of ours, Major Campbell, was unfortunate enough to receive and undergo the sentence of death for a duel fought in Ireland. This is the most mitigated case that occurs in the register of cenvictions; but I am sorry to say, and I will do it with all tenderness for the memory of that gentleman, that it was a strong and bad case. The parties had a quarrel, but separated afterwards for several hours; they were proved to be cool and composed in the interval, especially Major Campbell; they met again, and though they were quartered at the time in a garrison, where there were mutual friends, who could easily have been collected, they met in the night-time, *without seconds*, and in a private room. The only evidence, therefore, against the survivor was, and could only be, the general account of the antecedent quar-

rel, and the words of the unfortunate gentleman who was slaughtered, previous to his decease; and on this last the conviction depended. It was clearly made out that the unfortunate gentleman who died maintained that the duel was not fair, and said of his antagonist, that he was a bad man, and knew that he had hurried him.

Another of the cases where murder was found, was a case of plain assassination. I forget the names, but the parties met in the field, and when the one was going up to the other, apparently to salute him, or for some such purpose, he raised his pistol and blew his brains out. That man was tried, and most deservedly convicted, executed, and dissected, as a barbarian and ruffian, undeserving of the privileges or name of a gentleman.

Of the other cases which were selected for prosecution, some few have issued in a conviction of manslaughter, and these are all uniformly of the worst description. The first on record is that of a former Lord Byron, and approaches somewhat, in its circumstances, to that of Campbell. The parties quarrelled, went out from a company of their friends into a room, *without seconds*, and, by the light of a candle, fought with swords, and one of them was mortally wounded—the survivor, admitting that he drew his sword, and made a lounge at the other, before he got his sword entirely out of the scabbard; this, therefore, was a very narrow case; and on a trial before the Lord High Steward, a manslaughter was found, the prisoner being discharged on one day's confinement.

The greater part of the other cases are not reported, except in newspapers. But there is one case so reported, to which I beg leave to refer you, because, though it only occurs in the newspaper, it is one very famous, as being the first of those occasions in which judges admitted from the bench the necessity and expediency of juries tempering the law where, by necessity, judges have held themselves bound by it. I allude to that of Mr William Poe Purefoy, for killing Colonel Roper in a duel; and I may mention in a word the nature of the case, that you may see how infinitely more unfavourable it was than the present. Purefoy was a lieutenant in the regiment of which Colonel Roper was the colonel. The young gentleman had been guilty of some excess when engaged with his friends on a festive occasion, which called forth a pretty severe reprimand from the commanding officer. This was resented by the former in such unmeasured terms, that Colonel Roper was under the necessity of bring-

ing him before a court-martial, who found the charge proved, and sentenced him to be dismissed from the army, and rendered incapable of serving. That sentence being confirmed by the proper authority, was read at the head of the regiment, in Lieutenant Purefoy's presence, and carried into full effect. After this he came up to the colonel, and told him that he was a coward, a ruffian, and a scoundrel. The colonel answered, he had nothing to say to him, and turned on his heel. The same day he met him again, and said, "Do you now agree to meet me?"—at the same time shook his whip over his head, saying, "There is an earnest of what you may expect," and posted him. After some consultation, Colonel Roper was advised, as Purefoy had ceased to be in the army, and had the rank of a gentleman, it was necessary to send a message to him. They accordingly met, and Purefoy shot Roper dead on the field.

This case came to be tried in the year 1794, before Baron Hotham, at Maidstone; and that learned person, after summing up the case, (this is always done by the judges in England,) spoke as follows:

"It is now a painful duty, which jointly belongs to us; it is mine to lay down the law, and yours to apply it to the facts before you. The oath by which I am bound obliges me to say that homicide, after a due interval left for consideration, amounts to murder. The laws of England, in their utmost lenity and allowance for human frailty, extend their compassion only to sudden and momentary frays; and then, if the blood has not had time to cool, or the reason to return, the result is termed manslaughter. Such is the law of the land, which undoubtedly the unfortunate gentleman at the bar has violated, though he has acted in conformity to the laws of honour. His whole demeanour in the duel, according to the witness whom you are most to believe, Colonel Stanwix, was that of perfect honour and perfect humanity.

"Such is the law, and such are the facts. If you cannot reconcile the latter to your consciences, you must return a verdict of guilty. But if the contrary, *though the acquittal may trench on the rigid rules of law, yet the verdict will be lovely in the sight both of God and Man.*"

The jury instantly acquitted the prisoner.

Then came a remarkable case, one of the few that have been reported at some length, that of Captain Macnamara, for killing Colonel Montgomery, in which, I know not on what grounds, the Grand Jury had found a bill for manslaughter.

That is a pretty strong case, though I do not mean to impute any thing unfair to the gentleman who survived, and I hope still lives. It was a case of a foolish quarrel about a dog with which the unfortunate gentleman, who was killed, happened to be attended when riding in the Park; the dogs having quarrelled, Colonel Montgomery, who did not perceive that Captain Macnamara was near, came and separated the dogs, and said, "Whose dog is this? I will knock him down." On which Captain Macnamara said, "Have you the arrogance to say you will knock my dog down? you must first knock me down." An altercation took place; Colonel Montgomery and his party rode up through Piccadilly, and Captain Macnamara following him, sent a friend immediately to Colonel Montgomery, met him the same day, and shot him dead on the spot.

I only wish to call your attention to the nature of the defence in this case, which, I believe, was prepared (indeed I know it was prepared) by the present Lord Erskine, who appeared as his counsel, but was not allowed to address the jury. The defence which he prepared was one which no British jury could resist. He states, "I am a captain of the British navy. My character you can only hear from others. But to maintain any character without situation, I must be respected. When called upon to lead others into honourable danger, I must not be supposed to be a man who sought safety, bysubmitting to what custom has taugbt others to consider as a disgrace. I am not presuming to urge any thing against the laws of God, or of this land. I know, that in the eye of religion and reason, obedience to the law, though against the feelings of the world, is the first duty, and ought to be the rule of action, but in putting a construction upon my motives, so as to ascertain the quality of my actions, you will make allowances for my situation. It is impossible to define, in terms, the proper feelings of a gentleman, but their existence have supported this happy country for many ages, and she might perish if they were lost." The jury instantly acquitted him.

Now, if this was a case of justifiable heat and violence, I do ask you what construction you would put on the present case?

But there are two other cases to which I would call your attention. One from a very remote dependency of this empire, but which is known to have given several valuable men to the law. The case was from India—Bengal, I think. It was the case of Sheppard,* which was tried before Sir Henry

* Sheppard, Asiatic Register, Dec. 1808. Vol. X. p. 115, 116.

Russel, the Recorder of that Settlement. I must begin by stating, that this case issued in a verdict of manslaughter; though by the way, I would observe, that if there be any authority in law for a duel being a crime, it is either a murder or nothing at all. It is as much a departure from the authority of law to find manslaughter, as to find it no crime at all. This, however, was an aggravated case. A quarrel took place between two officers in garrison, who chose to go out after a good long delay, several weeks spent in the exchange of notes and so forth, in the dark, and to fight by the light of a lantern held by a black servant between them, without the inspection of a single European eye;—no witnesses were present, the offence of the party who suffered was of a very vague description, only one witness saying that he thinks he had heard Captain Phillips speak lightly of Sheppard on some occasion or other. On this provocation the challenge is given, the parties fight alone (for the black servant was not evidence) in the dark, and Captain Phillips is killed almost on the spot. I quote the judicial opinion on this occasion, rather to show the boldness with which the judge spoke out, (what all judges in their hearts must feel, and encourage juries to do,) than on account of its applicability to the present case. Sir Henry says, after stating that the crime of killing in a duel is murder: "At the same time, in compassion to human infirmity, courts of law and juries have been in the habit of making great allowances for the circumstances in which persons called upon to fight a duel may have been placed. When a fellow-creature is put to death from motives of deliberate malice, the law pronounces the crime to be murder. When the same act is committed with the immediate influence of violent passion, it is merely accounted manslaughter. Now, in the case before you, it will be for you to consider whether the present circumstances of society, as applied to a gentleman and a soldier, do not take away the particular character of malice from the crime. A man is placed in a situation, where, if he does not go out to fight a duel, he has no prospect before him in life, but that of contempt and ignominy. Surely, the feelings which are inseparable from such a situation, may be supposed to deprive a man of self-possession and self-command, as well as a violent gust of passion. And I see no reason why the law should deny, nor do I believe that the law does deny, the same indulgence to those feelings that it yields to a brutal impulse, which it is the chief object of all human and divine institutions to control. In declaring this opinion, I believe I go farther than most judges have done.

But I have not formed it without mature deliberation, and I think it places the question of law, in cases of duel, upon more stable and more tenable grounds, than the shifts and artifices which have been so generally resorted to." And he then alludes to the other circumstances which deprived the case of a malicious character. "Where it clearly appears in evidence, that two persons armed with weapons have gone out together, have fought, and that one of them has fallen, nothing more surely can be wanting to make out the facts of the case, and it is in vain to struggle against them, or to seek to prevent them."

The only other English case I shall trouble you with, is one which I also refer to,—not for the sake of that for which I might quote all the cases, the part taken by the jury—but for the judicial opinions, which you see I am collecting and going over, in order to show you that the Court not merely connived at but encouraged the lenity of juries, and, contrary to the law of England, allowed circumstances to be left to the jury, which had formerly been held matters of law, and among others, the inquiry whether the killing was malicious or not.

The case to which I refer attracted much attention at the time. It was the case of Alcock, which was tried before Baron Smith, in Ireland, in the year 1808, and I quote it, in order that the very strong judicial opinion given on that occasion may be before you, for, in other respects, it appears a case to be contrasted rather than compared with the present. It was a case of a duel between two candidates for an Irish county, where, as you may suppose, a pretty warm canvass was going on. Tenants of a certain rank have votes in Ireland. But, holding their lands by very precarious tenures, they vote in general with their landlord. One of these gentlemen had got the interest of a certain landlady, (for a lady was the proprietor,) and he therefore reckoned upon the tenants. The other candidate, however, was more popular, and the tenants were rash enough to tender him their votes. The offence of the unfortunate gentleman who fell was, that he allowed them to vote for him. The names of the parties were Colclough and Alcock. Alcock was the survivor—Colclough fell—Colclough had these votes tendered to him. Alcock, on finding this, came and remonstrated, in very warm terms, on the impropriety and indecorum of such a proceeding. Colclough protested in the most solemn terms that he had not solicited these votes. Alcock insisted that they should not vote for him. How can I prevent them? said Colclough. After some words, however, Alcock said he must have satis-

faction; a meeting was arranged, and they fought—certainly before a plentiful audience, for I believe most of the voters attended, so that there might be four or five hundred spectators. Mr Alcock put on spectacles before firing, which, it was proved, he did not at all times wear. This was remonstrated against by the second of the other party, who said that he could not see his father at that distance, (by the way, it would be no great misfortune not to see one's father in such a situation.) They then fought, and Alcock was shot dead the first shot. This case, which created a great and perhaps very reasonable sensation, came to be tried at the Wexford Assizes. The charge of the learned judge, after the evidence had been concluded, states as follows:

After observing that, in the earlier part of the circuit, there had been many capital trials which had excited no interest or attention, his Lordship proceeds:

"How different is the case of the charge which we are now trying? Yet strip it of the trappings and aggravations, with which I know not whether party zeal, or a more justifiable motive, has sought to clothe it;—and what does it amount to? To a transgression with which we must, on the one hand, confess ourselves to be almost as familiar, as we must, on the other hand, admit it to be highly culpable and illegal. Two persons, disclaiming and violating the municipal law, prefer paying obedience to a false and mistaken code of honour; and one of these disclaimers falls in a premeditated duel, forbidden by the law of the land; but which the erroneous system of punctilio, to which I have adverted, enjoins in some instances, and permits in many more. No sooner has this melancholy catastrophe taken place, than the friends of the deceased commence a vigorous prosecution against the causer of his death. But some of these prosecutors we may presume, we even know, to have themselves been present, aiding and assisting, at the perpetration of what they now represent to have been murder;—and, in strictness of law, their representation is a just one. Some of those prosecutors we may conceive to have at one time been desirous that *their champion should inflict the death which he has suffered*; should *do* the very act for which they now prefer a capital indictment. If, abjuring the code of honour, and adhering to the rules of that which we are here assembled to administer, the prisoners or the deceased had *declined to send a message*, or been tardy in accepting one, we may doubt whether these strenuous assertors of the law would not have scorned to associate with such strict observers of it; and rewarded

their pacific conduct with indelible disgrace. Thus, on the object of their blame a hard alternative might be thrown—of being *posted as a coward*, or indicted for a *murder*."

Then, after some remarks on the details of the case, he closes his address as follows :

" However much and justly such combats are to be blamed, you may more abhor the sanguinary notions which produce them ; and pity the victims of a law of opinion, which you strongly wish to be repealed. You may have sons, you must have friends and relatives yourselves ; and will be disposed to ask this question of your consciences and hearts, Whether the pride and infirmity of human nature might not lead you to wish that these would rather violate the law, than endure the scorn and contumely of (Heaven knows !) an unsparing world ; or incur the slightest stain or blemish on their honour. You will wish to give the prisoner the benefit of these reflections ; but whether you would be warranted to do so, *is what I scarcely dare inquire*,—otherwise than by suggesting cases which I conceive to be similar in their legal nature for the purpose of illustrating and explaining your duties here.

" If an officer, at the head of his regiment, be called a coward and a scoundrel, instead of cutting the offender down, challenge and kill him in a duel, he is a murderer by law ; and if you are *bound* to find the prisoner Alcock guilty, you will be equally *obliged* to return a verdict of conviction against a gallant officer, under the circumstances which I have described. Yet, on the other hand, the military punishment and intolerable disgrace, which must inevitably follow from his submitting to the affront, it cannot be necessary for me to dwell upon. If an aged, an infirm, a beloved and respected parent, be insulted and reviled, or even struck and beaten in the presence of a son, and this latter happen to kill the assailant in a duel, the transaction will be murder ; and if you *cannot* acquit the prisoner, you *could not* acquit the child. If a husband find his wife in the embraces of another, and kill him unarmed and unresisting, this is manslaughter of the lowest and most venal kind. But if, giving the adulterer further time for preparation, and a fairer chance for his life, he puts arms in his hands, and meets and kills him in a duel, the offence, altering its character, becomes at once murder ; and if you are bound to convict the prisoner here, you would be also bound to a conviction in the case which I have supposed. Not because in morals the criminality is equal ; but because both offences are murder in the eye of law. But let me ask of

your consciences and your hearts as men, could you convict the officer, the husband, or the son?

"*I will not repeat, lest I might seem to inculcate,* the austere doctrine of the law. In once stating it, I conceive that I have sufficiently discharged my painful duty. Nay, even sitting where I do, I think myself *warranted in doubting, whether this doctrine is not a sort of anomaly in our code;* existing in theory, *almost abrogated in practice,* by the acuteness of the judges, the humanity of jurors, the mercy of the Crown. This, Gentlemen, was all I had to say. The evidence is before you. If you believe it, you have heard its legal results from the bench. You have the law of the land, bearing witness against the prisoner, on the one hand; the law of opinion, on the other, endeavouring to excuse them; the one prescribing rigour; the other suggesting mercy. *It is for you to pronounce which call you will obey.* The trammels of my office forbid my adding more. But there is another, a far better voice than mine, to which, though I be silent, you may listen still. I mean that still small voice of which you read in Scripture, and which addresses itself to the consciences of good and pious men in the soft and soothing accents of clemency and peace. Its dictates may be followed with a confidence the most implicit. It is the voice of Him who cannot err; who cannot lead his creatures into error; who, to justice without blemish, can unite mercy without bounds; who, all criminal as we are, can acquit us, and yet be just. To the influence of those secret and divine monitors, and (as far as human infirmity can follow) of this divine example, I surrender you; and commit the care of the prisoner at the bar. I wait with some anxiety, and much impatience, for your verdict. Judge then whether I am impatient for a capital conviction."

The jury in one moment acquitted him.

This is all I have to say to you on the precedents from the sister countries, where, you will recollect, charges of this kind are stronger, because the crime stands upon statute in England. The Scotch cases are very few. *There is no instance for* 150 *years* of any conviction for fighting a duel in Scotland—*none,* that is, since the time when those causes existed which rendered it necessary to pass the severe laws I formerly mentioned. The only three cases I am aware of are of a recent date. They are the cases of Lieutenant Rae in 1797 or 1798, Macdonell of Glengarry in 1798, and Dr Cahill in 1811; all these were cases of acquittal; and all of them undoubtedly were cases far less favourable to the prisoner than the present.

Of the first case, no authentic record is preserved, but the

list of the jury is known, and I may be permitted to mention, that it consisted of men as honourable as yourselves, containing the names of many of the leading gentry of this place. Twelve of the jury were gentlemen of estate, and the remaining three were respectable citizens. That jury acquitted the prisoner, though it appeared that the sufferer had not been much to blame, and the survivor more.

The next case made more noise, and has been more correctly, at least more fully, reported. I am unwilling, as the respectable gentleman tried on that occasion still survives, to enter into the particulars of that case, farther than by saying, that it was admitted and proved, beyond the possibility of contradiction, that the unfortunate gentleman who fell had not been at all in the wrong, while the other was decidedly and egregiously to blame in the origin of the quarrel. Some little dissension occurred at a ball and supper in the North between Glengarry and Lieutenant M'Leod, and it was the opinion of all the witnesses that the latter gave no cause of offence. Glengarry, imagining, however, that he had, and, being of a passionate temper, indulged in the most unpardonable excesses. This young gentleman, wearing the uniform of an officer, and in the public ball-room, was accosted in the most violent terms by Glengarry, on account of some fancied insult, such as that he imagined M'Leod gave him an impertinent look. For this cause Glengarry struck this unfortunate young man with his cane, kicked him with his foot, and drove him in disgrace out of the room. A challenge ensued, and the parties met. Here, undoubtedly, by the advice of his respectable second, and with the help of his restored reason, Glengarry did confess the frightful excesses into which he had been hurried, and offered any apology—any atonement which was not inconsistent with the character of a gentleman. A condition was insisted upon, to which it was certainly hard, and perhaps impossible, for any gentleman to submit; the young man was advised to accept of no verbal atonement, unless Glengarry should put the whip with which the disgrace had been inflicted into his hand, and leave it to him to retort or not, as he might see cause. After much discussion, the terms were rejected—Glengarry went out—he did not fire wide of his mark or in the air, as Sir Alexander Boswell appears here to have intended, but fired into the bosom of the unfortunate young man, and his life fell a sacrifice in a short time after. A most respectable jury sat upon the trial. I shall read their names to you:

James Hamilton, Esq. of Bangour,
Sir Andrew Lauder Dick of Fountainhall,
Charles Brown of Coalston,
John Cadell of Cockenzie,
Francis Buchan Sydserff of Ruchlaw,
William Wilkie, younger of Gilkerston,
James Johnston of Straiton,
James Watson of Woodbank,
Thomas Sharp of Houston,
William Hamilton of Westport,
Alexander Marjoribanks of Marjoribanks,
Mathew Sandilands of Couston,
Henry Guthrie, Writer in Edinburgh,
James Home, Writer to the Signet,
John Gloag, Merchant in Edinburgh.

That jury tried the case; and after a long and elaborate defence, the facts coming out as I have stated them, they returned a verdict, all in one voice finding the prisoner *not guilty*. They accompanied this verdict with an explanation of the grounds of it, which has very properly been preserved, and is as follows:

"The Chancellor of the Jury stated, That he was desired by them to explain to the Court, that the sole ground on which the verdict proceeded, was the anxious desire latterly manifested by the pannel and his friend Major Macdonell, amicably to settle the matter, and prevent proceeding to extremities, by making an apology, as the jury highly disapproved of the pannel's conduct at the beginning of the unhappy dispute; and it was fortunate for him that the duel did not take place so soon as intended, before any attempt was made to apologize, as, in that case, it was highly probable that they would have returned a very different verdict. At the same time, it was proper to observe, that the jury had no idea of finding, by their verdict, that what is called fairly killing a man in a duel, could afford, by itself, any defence against a charge of murder." And of this verdict, with this explanation, the Court distinctly approved.

I forbear dwelling on this case. But I must say, that if you should find the prisoner at the bar guilty of any thing at all, and should not give him the full benefit of that verdict of not guilty which Glengarry had from your respectable predecessors, you will thereby, whatever degree of censure your verdict may truly be meant to imply, hold him out to the world as more guilty than the gentleman now mentioned. I cannot

imagine, however, that the cases will stand a moment's comparison; or that you will be either asked, or yourselves disposed, to pronounce a verdict touching him by the sentence of culpable homicide, or thus give the public any reason for believing that, as Glengarry, in these circumstances, was unanimously found not guilty, Mr Stuart's case must be more unfavourable when you find him guilty in any degree.

The last case which I have mentioned occurred in 1811, and arose out of an unfortunate quarrel between two young men, one the military surgeon, and the other a captain in the same regiment. There, too, though the character of the survivor, as well as that of his victim, appeared to be highly honourable, the cause of quarrel originated with him. He gave the first offence, and to the last refused to make any apology. Some trifling dispute arose at the mess, on account of Cahill having, contrary to the regulations of the mess, carried the file of a newspaper to his own room when sick. He laughed at the matter, and when informed of it by a friend of Captain Rutherford, (for that was the name of his antagonist,) he said that the thing must have arisen from personal pique; and upon being pressed to say whom he meant, he said, I don't mean to say any thing covertly,—I believe Rutherford has a personal pique at me. Rutherford naturally took this amiss, and no satisfactory explanation being offered, the parties, the same evening, went out, with two very young men as their seconds, to a quarry in the neighbourhood, or some such miserable place. At that time, many opportunities were given the young man there, but he would not apologize. They fired, and Rutherford was shot. Cahill was brought to trial, and I hold in my hand the notes taken, both by my learned friend Mr Murray, and by Mr Mackenzie, of the statement made on that occasion by the Learned Judge who presided, the Lord Justice-Clerk, now Lord President. "His Lordship said," in addressing the Jury, "that he would detain them but with a very few words. This was a case of a very distressing and afflicting nature. It was particularly distressing to those engaged in its determination; for it was impossible to disguise the truth, that the manners of the times, and the feelings of the people, were here in direct opposition to the law of the land.—As to the facts connected with the present case, all parties were agreed. It had been proved, and was admitted, that the deceased Captain Rutherford had been killed by a shot fired at him by the prisoner. His Lordship considered it his bounden duty to tell the jury that there could be no doubt as to

the law of Scotland, which declared that where one man killed another in a deliberate duel, this was as much to be regarded as a homicide, as if the deceased had met his death in any other criminal way. There being no doubt as to the law, there would, in any other case, be as little as to the verdict. But it was impossible not to see that these were circumstances which left a doubt. These circumstances were before the jury, *and it was for them to judge whether the law was applicable to this case*, and whether they would strictly carry it into effect. There was one circumstance, however, which his Lordship said he would mention, that might perhaps tend to relieve their minds of difficulty, if they felt any. When the prisoner surrendered himself in order to stand his trial, he was imprisoned on a charge of murder. After his incarceration, a petition was presented to his Lordship to liberate him on bail, but he refused this, as he had never known an instance of a person accused of the crime of murder being liberated in that manner. A few days after this, another petition was given in *with consent of the Public Prosecutor*, on which the prisoner was liberated. In giving this consent, it was obvious, that the Public Prosecutor did not consider the charge against the prisoner as amounting to murder. The jury would perhaps consider it rather hard in him to come forward now, and ask the infliction of a punishment, which corresponded with the crime of murder."

A verdict was pronounced, finding the pannel, with two dissentient voices, not guilty; upon which the presiding judge said, "Gentlemen, you have given a verdict *such as was to be expected* on the occasion." You have in this speech as direct an encouragement to a verdict of not guilty as could well be imagined; and after the verdict is returned, you have the judge declaring that it was exactly what he expected. Is it possible then to hold that our Courts now think that *all* killing in a duel is necessarily murder?

And now, Gentlemen, having detained you so long on the law and the precedents by which it is illustrated, I do not intend to go into the circumstances of the case. Look at the facts. I will not say the provocation given to Mr Stuart, that would be a poor expression. I say look at the circumstances of unmerited and atrocious abuse of which this gentleman was made the victim, and of which, when he found that the author was his equal in rank, it was impossible for him to remain a patient victim, without incurring actual and merited disgrace, and giving credibility to those imputations which, till then, no one could believe

against him. I shall follow the example of the Public Prosecutor in abstaining from detail. But look at his conduct throughout—Look at his forbearance, and the measures he took before he knew the party with whom he had to do—his application to the Sheriff for protection after he was bound over to keep the peace—his regular application to a court of law for the only redress that could be afforded against a printer, the real calumniators being in disguise. Lastly, look at his course of proceeding after he had a prospect of discovering the original papers, every part of which is now proved to have been marked by the most scrupulous propriety. Look at his conduct, so correct and proper, so moderate, temperate, and firm, in all that he did in getting these papers. He gave no promise to Borthwick—he paid no debt for him—he left him to act as he liked—Borthwick said, "I will save myself by giving up the authors!" Mr Stuart said in the most manly manner, I will not tempt you to do an act of a doubtful kind. He had not the least reason to doubt that Borthwick had a full legal right to exhibit these documents; and in truth he had. He got the papers. But he did not proceed instantly to vengeance. He took the highest advice that any man in his circumstances could procure, and he followed implicitly, temperately, and with perfect docility, the instructions which the noble and excellent person by whom he was guided thought fit to give him. They together conducted the negotiation that ensued, with complete temperance and forbearance. Renewed instances were given in the course of this of the extreme placability of his nature, joined, throughout, with the greatest manliness and resolution of character. In spite of those accumulated and long continued calumnies from which he had suffered so much, Mr Stuart was still willing, and authorized Lord Rosslyn to state, not merely that if Sir Alexander Boswell would disown the papers, but that if, even avowing them, he would say that it was a very bad joke, of which he was ashamed, and that he meant no imputation on Mr Stuart's honour, even then he was willing to have received such an apology, and allow the matter to proceed no farther. This was refused by Sir Alexander Boswell, he recognizing himself, in the same instant, as the author of the song which has been so often referred to, and of other writings of a similar description, for all his avowals relate to a plurality of attacks. It is not a little meritorious that Mr Stuart should have made such an offer, for it is to be recollected, he was in possession of irresistible evidence of Sir Alexander Boswell's connection with all that had been written.

Can any thing, then, I say, be more beautiful, more satisfactory, more free of all animosity, hostility, or even of undue pride, or infirmity of human nature, than this? But these his most reasonable offers being rejected, the course he took, I say, at once, was *inevitable.* I do not plead for it the apology of provocation. It was not done in heat of blood, or under the influence of any *passion,* criminal or venial. It was the deliberate act of a wounded heart, and a mind convinced and overwhelmed with the sense of its absolute necessity. In the long vista of his repeated meditations, in the cool anguish of nights and days, he saw and felt that he could not live without doing that which brought his own life into hazard, and, what to him was more painful, brought the same danger to his enemy. He was actuated by no violence, no heat of feeling; his actions now were only in unison with what his words had been before; and these showed that his motives were pure, defecated from any stain of anger or malignity. From first to last there is proof that his heart was overwhelmed with the painful sense of what he had unwillingly done to the unfortunate man who injured him; and if his courage and firmness are undeniable, while exposed to danger, the relentings and kindness of his heart are equally displayed when it was over. What he said to Mr Liston and to Lord Rosslyn, is confirmed by that most pathetic interview with Mr Gibson, when he exclaimed, "Would to God I *had* taken aim, and then I might have missed him." When you compare that with the scenes and recollections which had led to it; when you find him agitated and overwhelmed, you must be satisfied that slaughter was not wished for by this person, that nothing was desired by him, but the restoration of his own dignity; you must feel that the fatal act was forced upon him, as irresistibly as if he had been the involuntary executioner of a judge's warrant, or a being doing the behests of a higher power. This gentleman, who was called, in language that disgusts and astonishes one, even in the repetition, sometimes a coward, and sometimes a ruffian,—who as a coward should have exulted in his safety,—as a ruffian have triumphed over his fallen foe? What does he do in this moment of instinctive feeling? Why, Gentlemen, you find him dissolved in speechless grief. He cannot express in language the misery he feels, upon witnessing the fate to which his unlucky hand had just consigned his enemy. His emotion, indeed, resembles more the meltings of a female bosom than the agitation of a male. When forced from this scene of distress and danger to him, and driven to a foreign land for his immediate safety, we there find him still

pursued by his melancholy reflections; and when Mr Allan communicates to him the certainty that Sir Alexander Boswell was dead by his hands, his burst of grief is overwhelming and frightful, and when he tries to relieve him by the consideration, that Sir Alexander's death was brought upon him by his own act, while he (the prisoner) was free from evil design, and forced to what he did, his conduct again is a demonstration of the purity and kindness of his soul; for what does he say?—Does this heartless ruffian exult in the agonies of his victim? Does this bully relate the tale of his prowess? No—he is dissolved in tears at the misery he had caused—he is overwhelmed with speechless agony. And when desired to remember that he was a mere instrument in the hands of a Higher Power, he turns immediately to those who were about him, and says, "It may be so; but how can I think of the condition to which I have reduced his wife and children?"

After what you have heard of the character of Mr Stuart, I need not refer to the commentary which it affords on his conduct, as given in evidence. The character given of him by the friends who have known him longest and best, separated as they have been from him by political opinions, is just the character I should expect of a man who is proved, by the evidence of this day, to have acted as Mr Stuart has done; and the way in which he acted, is demonstration that he truly deserved the character which had been given of his mind.

Take, then, his character, take his actions, and say whether you can find yourselves bound, whether you can find yourselves entitled to pronounce him guilty of having maliciously killed his adversary, instead of irresistibly and necessarily going out as he did, in vindication of rights a million times more dear than those in support of which it is lawful to kill. I cannot doubt your answer to this question,—one only can be given.

I am afraid my anxiety has induced me to trespass far longer on your patience than the difficulty or danger of the case required. There is certainly a puzzle in the words of some law authors. I have been anxious to dispel this. On the reason and justice of the thing there cannot be a doubt. For, after all the admonitions and solemn warnings of the scenes we have been reviewing, and in which we are now engaged, I doubt whether there be one among you who could bear to be called a coward, and branded as a ruffian, day by day, and after discovering that these injuries were inflicted by one known to be your equal in rank, would not incur all the hazards to which my unfortunate friend has been exposed, though few of us could imitate the mildness

with which he encountered them. I trust, therefore, you will not find him guilty, for doing that which, in his circumstances, you must feel that every one of you would have done; that which you must in your hearts wish that the best and dearest friend you have in similar circumstances should do—that you will not, in a word, find a man guilty of acting maliciously while you believe him to have been absolutely free from malice. I trust, therefore, that, not in violation of the law, but in dutiful observance of its spirit and clear injunctions, and rigorously giving it effect, you will find him Not Guilty of the crime with which he is charged; and thus restore him untainted to that society of which he is the delight, and in which he performs so many useful offices; and, at the same time, in part at least, to that peace of mind which, with his feelings and his heart, I fear it is not in the power of your verdict, or of any human tribunal, ever effectually or completely to restore.

THE LORD JUSTICE-CLERK.

Gentlemen of the Jury,—In this important case, which is now brought to a close, I proceed to submit to your consideration such observations as, in the discharge of my duty, it is incumbent on me to state to you, before you declare the verdict you are to give.

I am extremely happy I have the honour to address a Jury of such respectability as that I now see before me; and extremely gratified, as I am sure the Court in general is, with the great patience and attention you have bestowed upon this trial. I have not a doubt but you will consider it to the end with the same patience; that you will reflect upon it with caution and circumspection; and return a verdict which, in your consciences, you shall think to be founded in wisdom, justice, and truth.

It is necessary for me to call your attention, in the first place, to what I consider to be the law of Scotland as applicable to this specific charge. The charge exhibited against the unfortunate gentleman at the bar is that of wilful murder, which is stated in the indictment to have been perpetrated in a duel with the late Sir Alexander Boswell, on the day there mentioned.

You will observe, that the charge is, that, having conceived malice and ill-will against the unfortunate gentleman now no more, the prisoner did challenge him to fight a duel; that a

meeting was concerted in consequence, which meeting took place in the neighbourhood of Auchtertool, and that there the deceased received that wound which terminated his existence. Now, the nature of this charge, apart altogether from the defence, is that of a killing or slaughter perpetrated in a duel, which duel is stated to have been concerted beforehand; and it is, therefore, necessary to call your attention to the authorities in our law, in regard to a charge of this nature. I am bound in duty to bring the law distinctly into your consideration, in reference to the charge as laid, and in reference, moreover, to that defence which has been urged by the two learned gentlemen, who addressed you for the prisoner with such consummate ability and eloquence, and to say whether the facts of this case bear them out or not in this their defence.

I prefer stating the law in the words of our authors, rather than in my own words, and I begin with mentioning an ancient writer, Sir George Mackenzie, who has a distinct article, or *title*, as he calls it, on duels, on the unlawfulness of which he pronounces a clear and authoritative opinion, on which I shall not trouble you with enlarging, but simply refer you to his emphatic introduction: "Duels are but illustrious and honourable murders; and, therefore, I have subjoined this title to the title of Homicide: This is that imperious crime which triumphs over both publick revenge and privat virtue, and tramples proudly upon both the law of the nation, and the life of our enemy. Courage thinks law here to be but pedantrie, and honour persuades men, that obedience here is cowardliness." *(Mackenzie's Crim. Instit. Tit. XII. p. 72.)*

I shall now call your attention to the authority of Mr Baron Hume, who, though still living, is the highest authority that can be resorted to, and whose work on the criminal law is daily founded on in this Court, and is deservedly quoted as the highest authority, both at the bar and on the bench. Mr Hume, in treating of the several pleas regarding self-defence, expresses himself thus: "Even when all these considerations unite in support of the pannel's plea, as relative to the moment of killing, there may, however, be one circumstance more in the case, which shall hinder them from procuring his complete acquittal. This is, if the pannel has himself in any degree been the cause of the fatal strife; and this he always is in the estimation of the law, when he and the deceased meet in pursuance of a concerted appointment to fight a duel. For this deliberate resolution *to kill* a fellow-creature, the law cannot but hold both par-

ties equally and deeply blameable; and the full plea of *self-defence* is, therefore, out of question in all such cases, whatever may have been the origin and history of the quarrel, and though the deceased have fallen a victim to his own insolence or indiscretion. As little can the survivor have the benefit of an entire justification, on account of any favourable circumstance which happens in the course of the combat, or of the conference between the parties after they have met upon the ground. Put the case that John and James deliberately appoint to fight with mortal weapons; and in the course of the combat James is wounded and retires, and calls to John to desist; but John refuses, and follows up his advantage so hotly, that James, purely to save his life, is at last constrained to kill. If this is not even a case of murder, (and I rather think it so,) at least it is exclusive of the plea of self-defence; because the danger and the necessity are occasioned by John himself, are the result of a situation which he has deliberately courted." (*Hume on Crimes*, Cap. VI. p. 224.)

He then puts the case of Robert Robertson: "In the case of Robert Robertson, it was even judged to be murder in the survivor, though he offered to prove, that, on his first *coming to the field*, he earnestly declined the combat, and that he was threatened and reviled, and drawn upon by the deceased, so that he had no choice, and was forced to defend his life. But, though urged to the effect of *alleviating* only, (and I rather think it *was* relevant to *that* effect,) the plea was disregarded, and the libel alone was remitted to the assize. There is thus no room for a plea in mitigation even, and much less an entire acquittal, when the parties meet by a deliberate appointment, and fight fairly on equal terms, without either of them giving back or declining the strife. Nay, more, it has hitherto been held in our practice, (though it may be otherwise in the law of England,) that is, nothing less than murder, though the parties fight in heat of blood, and on a sudden quarrel; if they go out, however, by agreement, with that design, and how fair and equal soever the circumstances of the combat."

In illustration of this he refers to the case of William Douglas in 1667, and of Gray in 1678, and a still later one in 1691, Master of Tarbet and others, in which these precepts of the law are completely established.

It is true, as Mr Jeffrey has stated to you, that these cases are all of an ancient date, and Mr Hume, after alluding to this case of Gray, has a note which I shall read to you, be-

cause in the last edition of his work, the learned author repeats his former view of the law, having distinctly in view the recent cases, which were very properly read to you by Mr Jeffrey: "Much intercession was used to save Gray's life; and on a bill to the Privy Council, he obtained a respite for a month, and even a remit to the Lords of Justiciary to reconsider the grounds of the verdict. But in the end, (says Fountainhall, Vol. I. p. 2,) 'after the poor man was put in hopes of his life, he was beheaded. He died with more courage than could justly be expected from one of his education. It was urged for him, the confession proven was merely extrajudicial; and he was not presumed to be the aggressor, he being but a tradesman, and old, near the age of fifty, the other a gentleman, and young, and known to be a *romp*.'

"Though such is the undoubted law on the subject of duel, and exemplified in the instances mentioned in the text, it has so happened, that on several later occasions of trial for homicide committed on challenge to fight, the pannels have had verdicts of acquittal. This was the issue in the case of George Rae, 18th June 1798; and of Macdonell, 6th August 1798; and of Alexander Cahill, 2d and 3d January 1811."

Here, then, is the opinion of Mr Hume; and I call your attention to another author now no more, who had a very extensive practice in criminal law, and has left behind him a work of value on the subject. Mr Burnett, in treating of self-defence, expresses himself thus:—"It has been made a question how far *self-defence* is in any case pleadable, where there has been an agreement to fight, and parties have met in consequence of such appointment. It has been said, that, in all such cases, as the killer has brought the *necessity* on himself, and his agreement to fight bespeaks a deliberate purpose to kill, he cannot plead justification on the principle of *self-defence*, or even a mitigation of his guilt, on the footing of provocation and *heat of blood*.

"There seems, however, room for distinguishing between a combat where parties fight *de recenti*, immediately on the quarrel, and almost on the spot, and a combat after some interval of time, with due preparation of weapons, and an adjustment of the forms usually observed on such occasions. The first may truly be considered as a combat in *heat of blood*—the other as a cool and deliberate act, savouring of malice and revenge, and possessing all the characteristics of murder."—(*Burnett's Crim. Law*, Cap. I. p. 47.)

He then refers to the authority of Judge Foster, who is also mentioned by Mr Hume, and concludes thus: "It is agreed, however, on all hands, that a deliberate act of *duelling* excludes the plea of self-defence; and in strict law this holds, whether the indictment is laid merely for murder at common law, or on the act of James VI. against duelling; for where the act is deliberate, and of set purpose, and still more where it is the result of a previous concert, *self-defence*, properly speaking, can have no place; and, in such case, it can make no difference at common law, who was the challenger or first aggressor, though, under the statute, (1600,) the *provoker* (as he is there called) is punishable *with a more ignominious death.*"

But he adds: "Notwithstanding of this, it may be difficult for a jury to lay out of view altogether, in a case of *homicide* in a duel brought to trial at common law, the circumstance on which side the original aggression lay, or the nature of the antecedent provocation, (and, much more, any alleged *unfairness* by inequality of weapons, or in manner of attack, or mode of fighting,) without regard to *who was the immediate challenger*; thereby making allowance so far for the notions of honour which usage and custom have sanctioned."

"We have a late example where the jury evidently proceeded on some of these grounds. This was the case of Lieutenant George Rae, 18th June 1798, who in a duel killed Lieutenant M'Vean, of the same regiment. Rae gave the challenge, but the deceased was the aggressor. It appeared in evidence, that he had given the lie to the prisoner in a public mess-room, and being desired by the corps to make an apology, he did so, but in so improper a manner, that the corps thought it an insult on them; on which he said he meant no insult to the corps, but to Rae, whom he afterwards called 'scoundrel.' The consequence of this was a challenge from the prisoner. The libel was laid as for murder at common law, but the jury returned a verdict of 'Not Guilty.'"

I have brought these two opinions of Mr Hume and Mr Burnett fully and distinctly before you, and demanded your attention to the cases to which they refer, as showing the course of modern practice on this subject. Farther, as both Mr Hume and Mr Burnett mention the authority of the law of England, I think it right that I should lay distinctly before you the state of that law; and I shall quote the highest authority for it, that of Judge Foster, in his discourse on

Homicide. He expresses himself thus: "But in this, and indeed in every other case of homicide upon provocation, how great soever it be, if there is sufficient time for passion to subside, and for reason to interpose, such homicide will be murder."—*Foster's Crown Law*, Disc. II. cap. v. p. 296.

Then he puts the case of a person finding another in the act of adultery with his wife: "For let it be observed, that, in all possible cases, deliberate homicide upon a principle of revenge is murder. No man, under the protection of the law, is to be the avenger of his own wrongs. If they are of such a nature for which the laws of society will give him an adequate remedy, thither he ought to resort. But be they of what nature soever, he ought to bear his lot with patience, and remember *that vengeance belongeth to the Most High.*

"Upon this principle, deliberate duelling, if death ensueth, is, in the eye of the law, murder. For duels are generally founded in deep revenge. And though a person should be drawn into a duel, not upon a motive so criminal, but merely upon the punctilio of what the *swordsmen falsely call honour*, that will not excuse. For he that deliberately seeketh the blood of another upon a private quarrel, acteth in defiance of all laws, human and divine, whatever his motive may be.

"But if, as I said before, upon a sudden quarrel, the parties fight upon the spot, or if they presently fetch their weapons, and go into the field and fight, and one of them falleth, it will be but manslaughter; because it may be presumed the blood never cooled.

"It will be otherwise if they appoint to fight the next day, or even upon the same day, at such an interval as that the passion might have subsided; or if, from any circumstances attending the case, it may be reasonably concluded that their judgment had actually controlled the first transports of passion before they engaged. The same rule will hold, if, after a quarrel, they fall into other discourse or diversions, and continue so engaged a reasonable time for cooling."

In this opinion, Judge Foster is confirmed, by the opinions of single Judges, and by that of the whole body of the Judges of England, as delivered in different cases mentioned in the Books; so that there cannot be a doubt, that the law of England is correctly stated by that learned person.

Having thus stated to you the law, as applicable to such cases, it is now necessary for me to advert to what the real

nature of this charge is, as stated, first, in the indictment and evidence for the Crown; and, second, in the defence.

This charge states, that malice was entertained by the prisoner at the bar against the deceased, in a way somewhat different from that ordinary species of malice which the law itself implies in the case of a deliberate and preconceived murder; for, here it is said, "In so far as you the said James Stuart having conceived malice and ill-will against the late Sir Alexander Boswell of Auchinleck, Baronet, and having formed the unlawful design of challenging the said Sir Alexander Boswell, and others of the lieges, to fight a duel or duels, you did, upon the 9th, or one or other of the days of March 1822, in order to enable you the better to accomplish your said unlawful design, repair to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents connected with said newspaper, which were then in the premises, in Nelson Street of Glasgow, occupied by Robert Alexander, editor and proprietor of the said newspaper, and in the lawful possession and custody of the said Robert Alexander; and the said William Murray Borthwick having been liberated from jail, as arranged and concerted by or with you, and having on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried away from the said premises, in Nelson Street of Glasgow, sundry writings, the property, or in the lawful possession of the said Robert Alexander; and having brought, or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings; and having found, or pretended to have found, among them some writings holograph of the said Sir Alexander Boswell, you did wickedly and maliciously challenge the said Sir Alexander Boswell," and so forth.

Now, in the first place, it is for you to say,—whether this narrative is made out; but, indeed, I did not hear any thing said by the Public Prosecutor, that he had made out that part of the narrative of the indictment. Farther, the evidence for the prisoner seems to have shewn, that he had no sort of conception, before he had made the discovery in Glasgow, of who was the author of the offensive articles. You will recollect the testimony of Mr Spalding, Mr Hen-

derson, and Mr Gibson, as to the utter ignorance of the prisoner on this point. Their testimony is clear and explicit as to this, and distinctly proves that, at all the confidential meetings, though Mr Stuart was convinced that Borthwick was not the author of these libels, yet he had not the slightest conjecture that Sir Alexander Boswell was at all concerned with them; and you will recollect, that, though Spalding and Henderson, who accompanied him to Glasgow for the purpose of getting access to these papers, were with him both on the way and there, not a syllable escaped him by which they were led to suppose that he suspected Sir Alexander Boswell to have had any concern in the matter. Nay more, both Spalding and Henderson positively swear, that when the papers were examined, and something was said by Borthwick which led them to suspect Sir Alexander Boswell, Mr Stuart declared that he had never suspected Sir Alexander, and seemed to feel real surprise and astonishment.

It is for you then to say, whether you can, in reference to this part of the narrative of the charge, find, that the prisoner had previously conceived malice against Sir Alexander Boswell, and that, in furtherance of this, he had set out to Glasgow to obtain papers which should enable him to prove that gentleman's connection with the matter. To me it appears, that this part of the narrative, so far from being proved, has been completely negatived, even by the evidence of the Public Prosecutor himself.

The case being discharged of this part of the indictment, the question that remains is, Whether, in the view of the law which I have stated to you, there is not an obligation upon you to find a verdict against the prisoner at the bar, on account of the duel itself, on a review of the evidence laid before you? Now, Gentlemen, at this hour of the morning, I shall not consume your time with a detail of that evidence. Generally speaking, the evidence has been given in a very distinct manner; and I would, in particular, say, that the evidence of the Noble Lord, one of the seconds, was given in the most correct manner I almost ever heard.

In the *first* place, then, you will take into your consideration the alleged offensive articles of which the unfortunate gentleman at the bar complained, and had good cause to complain. You have it in evidence that, in the newspaper which has been mentioned, various offensive articles of the most aggravated nature, with regard to his character and reputation as a man of courage and honour, did appear,—

nay, that, though some of them are not quite so gross, a reiteration of these charges and insinuations continued for some considerable time. I need not remind you of the tenor of the song, nor of the letter signed *Ignotus*, nor of the other two articles. They were read to you,—such parts of them, at least, as were material and most offensive,—by the learned counsel at the bar.

You will also consider the evidence that has been produced as to the manner in which Mr Stuart got access to these writings. I have already glanced at this in reference to another point of the question. But you will now consider whether the evidence warrants a conclusion that Mr Stuart was guilty of any impropriety in the mode of getting access to them. Now, in the *first* place, I would remind you, that you are not trying him here for any such charge. But, even if I did hold it as a charge before us, I would ask whether, after the evidence given by Mr Henderson, the country agent, who conveyed the offer, and of Mr Spalding, the town agent, who communicated it here, and of Mr Gibson, it can be considered that there is any proof that Mr Stuart took any improper steps towards the acquisition of these writings?

The evidence goes to this, that Mr Stuart got information through Henderson, that Borthwick was disposed to compromise the action of damages, and had desired Mr Henderson to make proposals; that Mr Stuart promised no terms in return; but said, if Borthwick gave up the author or authors of these libels, he would then consider what he should do; that, at present, he would enter into no engagement of a positive nature. The evidence of Mr Henderson positively negatives any suspicion that Mr Stuart advanced one farthing of the money which enabled Borthwick to leave the jail. Henderson positively swears that the L.50, which he consigned, was money advanced out of his own proper funds, and that not one farthing came from the prisoner at the bar. Mr Gibson tells you, that the consignation was made in consequence of what had already happened to Borthwick in being ousted from his office; and that, lest Alexander should get hold of the manuscripts and destroy them, he advised that no time should be lost in liberating Borthwick from jail; adding, that he would rather advance the money himself than run that risk.

But it is not established that Mr Stuart offered any thing at all. Whether Mr Stuart went to Glasgow, or remained there or not, for any time, we have no business to inquire.

But as to any appearance of his being concerned in any undue invasion of the premises we heard no evidence whatever.

You will next consider what the evidence says of the authorship of these papers. It must be fully in your recollection that Lord Rosslyn said he had examined them with care, and in particular the offensive song, looking at the paper and examining the water-marks and post-marks; and his Lordship has told you that he conceived himself authorized to say, that there was strong presumptive evidence that these articles were in the hand-writing of Sir Alexander Boswell. I therefore conceive that a most material circumstance for you to consider is,—and the prisoner is fully entitled to the benefit of it—the moderate communication which the Earl of Rosslyn thereupon made, as to the terms of which his Lordship was fully confirmed by the evidence of Mr Douglas; namely, if Sir Alexander Boswell, on the one hand, should say that the papers were not in his hand-writing, or that he had nothing to do with them, that that would put an end to all further inquiry, and would be held as negativing all evidence; on the other hand, that if he would say, supposing them to be his, that the thing was a bad joke, and he was sorry for it, the matter would then be allowed to drop.

Sir Alexander Boswell acknowledged the signed letter to be his, but he declined saying any thing as to the unsigned papers. He did this by the advice of his friend, who thought it the most prudent course; though Mr Douglas, in his evidence, has admitted that he had no doubt, from his conversations with the unfortunate gentleman deceased, that they were written by him,—two verses of the song, indeed, having been repeated by him to Mr Douglas. But in the delicate situation in which that gentleman was placed, it was deemed right to take the course which he did.

Something was put by way of hypothesis to Lord Rosslyn and Mr Douglas, as to what would be their opinion, supposing that they were not sure that these papers were in Sir Alexander's hand-writing. I am much afraid, however, it is not necessary for us to speak to that at all; for you have heard the evidence with regard to the Song, the letter signed *Ignotus*, the paper with the name *Mark Tod*, and the letter beginning "The late Lieutenant James Stuart." You have had evidence as to these, of the truth of which there cannot be the remotest suspicion; and I have no hesitation in saying, that, in my opinion, it leaves no doubt as to whose hand-writing they were. You have, for example, Mr Lizars, a witness for the Crown, who was desired to look at these articles along with the

others, and who told you, that though he formerly held the opinion that the song was not in the same hand-writing with the letter, yet, on farther consideration, he did come to think that they were the same. He detailed his reasons for thinking so, such as that a great many letters were exactly similar, and mentioned other things which satisfied this professional man that the writings were in the same hand. But besides, you had Dr Coventry and Mr Dalrymple Gardner, who swore that there could be no doubt as to the hand-writing.

I need not detain you with the proceedings to which this discovery led. I only wish that the binding over by the Sheriff could have been more effectual; and I know that had I been applied to, I should have done my utmost to bind them over, and I should only have regretted that my own powers in this respect were not more extensive.—The result of all was, that the parties met, and took their ground, each armed with a pistol, that they both fired together, the prisoner first, and the deceased after a momentary interval, and the deceased fell. On this part of the case, the evidence of Lord Rosslyn, Mr Douglas, and the surgeons in attendance, is complete.

Therefore, Gentlemen, you have to attend, in the first place, to the evidence of what led to this unfortunate quarrel; the nature of the provocation, of the wrong of which the gentleman at the bar complained, and which is to be found in the terms of those articles that were put in in evidence; the measures which were attempted to prevent a meeting; the proposal which was made through the medium of Mr Stuart's second, and all that took place after their failure. You have also, of course, to attend minutely to the conduct of Mr Stuart, both previous to and on the field. You have the communication made by him to his surgeon Mr Liston, on the road, distinctly stating that he had no malice against the deceased; that, on the contrary, he was related to him distantly, but that no alternative was left as to the course which he must pursue. Then, you will recollect the evidence of Lord Rosslyn, that in nothing that he said did Mr Stuart appear to be actuated by malice or rancour; but that, on the contrary, he felt himself to be under an inevitable necessity of taking the step which he did, merely to vindicate himself from the injury he had received, and with no intention of deliberate malice against Sir Alexander Boswell; in the propriety of all of which Lord Rosslyn told you that he entirely agreed.

You will take these matters into recollection, and keep in view also the evidence given by Mr Gibson as to the very becoming manner in which Mr Stuart expressed himself to

him after the unfortunate rencounter,—the great concern he showed,—his uncommon grief,—the agony in which he was when he communicated the fatal intelligence,—the opinion which Mr Gibson felt himself able to draw, that he had not the slightest personal animosity against the deceased gentleman. You will compare all this with the evidence you have, both from Mr Douglas and Lord Rosslyn, as to the fairness of the proceedings of the prisoner, on the field,—his wish to show civility to Sir Alexander Boswell, which Lord Rosslyn thinks had not been observed by the deceased,—but the intention to show it is, of course, a favourable circumstance. Then you will recollect the evidence you heard as to Mr Stuart's conduct in France, when he received the intelligence of his antagonist's death. Mr Allan swears, that he received it with great emotion, and in a manner which affected him much at the time,—that his sorrow continued afterwards unabated,—that for a fortnight, during which Mr Allan continued to see him, he brooded over it much, seeming to feel it deeply; and when Mr Allan intending to comfort him, reminded him, that he was forced to what he did, and that the other had brought it all on himself, he made the affecting exclamation,—yes! but remember his poor wife and children. He did accordingly observe, that the prisoner was deeply affected and grieved, and that he wept severely, so much so, that the witness said he himself was deeply affected.

Then you have another circumstance in the prisoner's defence, and in cases of this description it must necessarily weigh greatly, for in a case of murder, which undoubtedly requires a conviction in the minds of those who try it that there was a malicious intention of killing, the evidence of *character* is of great importance. On this point you have complete testimony. You have the evidence of Lord Rosslyn, Lord Kinedder, Dr Robertson, Mr Erskine of Cardross, Mr Richard Mackenzie, Mr Francis Walker, Mr Walter Cook, and Mr Hay Donaldson. I hope I have not omitted any. Are there any others? *(Upon being reminded from the bar of Mr Gibson's name)* Yes! Mr Gibson, surely, a valuable testimony.

Now, with regard to the testimony of these witnesses, I should, with the greatest pleasure, read to you the words of all these gentlemen, for I have taken a note of what they said,—but certainly it is not necessary; for sure I am you will all agree with me when I state to you, that I never had occasion to witness a stronger, more perfect, and more entirely

concurring body of evidence in favour of character, than the prisoner has this day exhibited. And it is another remarkable feature of the greater part of this evidence, that it has, with extreme good taste, been extracted from the mouths of gentlemen who happen to be politically opposed to the prisoner, but who invariably give the most unequivocal testimony to his good conduct, not only in general, but by stating some remarkable instances of the amenity of his temper. Mr Erskine stated, in emphatic language, that the prisoner appeared to him to possess more of the milk of human kindness than any man he had ever known. Mr Richard Mackenzie, said, that he had been twenty years in a club with Mr Stuart, and that he had never heard him say an ill-natured thing of any one; and his late partner, Mr Hay Donaldson, told you that, though their separation was not sought for by Mr Stuart, neither this circumstance, nor any other, ever created the slightest difference between them; and that Mr Stuart possessed a remarkable, mildness of temper,—was far from being quarrelsome, on the contrary, was always disposed to make up quarrels.

Now, with such a body of evidence as this, itis impossible to require higher testimony of the improbability of a crime such as that here libelled; and, therefore, keeping the rule of law in view, which I have been under the necessity of laying before you, and taking into your consideration the whole evidence on both sides, every part of which you will weigh with attention, you will now consider, whether the prisoner is guilty of the crime of murder as laid against him, or entitled to the verdict of Not Guilty, which he demands of you.

Gentlemen, With respect to the defence set up this day, which, if I understand it rightly, was not so much rested upon the provocation given to the prisoner, as upon the inevitable necessity that was imposed upon him of taking the course which he did,—it does not appear to me advisable, for the sake of the law, to divest the case altogether of the nature of the *provocation* given; neither do I conceive it the safest course for the pannel; for it comes to be a very difficult and delicate consideration, indeed, whether, if you lay that matter apart, and then defend this case of a determined duel, terminating fatally, by saying that it was undertaken for no other purpose than rescuing the prisoner from the situation in which he was placed;—this, I say, appears to me to be a delicate and dangerous position to put the case upon; for I apprehend the rule of law is quite clear in cases of this description, that no false

punctilio or notion of honour can vindicate an act which terminates fatally to another fellow-creature. But take that consideration, urged as it was with all the powerful eloquence of the learned counsel, and take along with it the injuries received by the prisoner,—the uncommon provocations given,—the terms of accommodation offered and rejected,—and combine them all together; the temperate conduct of the prisoner in the field; his grief for the fatal issue of the meeting,—then, in my humble apprehension, you will have a case before you which, in reference to the charge made, and the evidence led in support of it, is well deserving of your most calm, deliberate, and dispassionate consideration.

In order to make way for the conclusion, to which the learned gentleman thought himself warranted to come, in asking a verdict of Not Guilty, he expatiated on the subject of duels in general, and endeavoured to justify them, or if not altogether so, to palliate them, by referring to a variety of moral writers, some passages from whose works he read to you. Now, I beg leave to say, that these may be all extremely good topics in a general discussion, but they are not what, as a Judge sitting here, I am entitled to lay any stress upon: I must look alone to the authority of law writers, and to the practice of Courts. As to what moral writers may have said of the advantages which may have arisen from this practice of duelling, this affords no safe ground of judgment.

But there were other topics referred to by the learned counsel, and which I admit are legitimate sources of judgment for you,—adjudged cases, and charges of judges in trying these cases. Mr Jeffrey has stated, and I have no doubt of the accuracy of his statement, that convictions in cases of duelling, where every thing has been fair, have been extremely rare. No one can doubt of this, and it is admitted by both the authors whom I formerly quoted. Mr Burnett notices the case of Rae, the result of which he approves, but he speaks differently as to the case of Glengarry. Mr Hume, you will recollect, alludes to these cases, as well as to that of Cahill, and also says how much juries are disposed to acquit where the proceedings have been fair. You have heard, also, the names of respectable jurymen concurring in such verdicts; but you must lay these out of consideration, and only keep in view, that, as former juries have exercised their discretion in the discharge of their office, so you must do in discharge of yours, and come to similar conclusions, only if you see sufficient grounds. You will consider the charge, the evidence for

the charge, and the strong body of evidence which has been brought forward on the part of the prisoner. You will recollect that, as to the narrative part of the charge —that of malice in seeking a quarrel—it has been directly negatived; and, with regard to any thing like personal rancour, there is the strongest evidence that no such feeling entered into the mind of the prisoner. Considering, therefore, the circumstances in which he was placed—the strong necessity he felt himself under to vindicate himself—the deliberate way and manner in which he set about his vindication, not proceeding instantly himself, but sending to the Noble Lord, whom he employed as his friend, who told him that he had no other alternative but to act as he did—the total absence of all rancour—the great sorrow that he expressed on account of the fatal consequences of the meeting, and the uncommon body of testimony to the mildness of his character,—taking all these things into your consideration, you will consider whether you can, with propriety, pronounce him Not Guilty.

Gentlemen, before concluding, I must say, that I am not one of those who can give the slightest countenance to such proceedings as those which led originally to this fatal business. Neither I nor any other Judge in this Court can give the slightest countenance to publications such as those which were directed against the gentleman at the bar. It is one of the greatest misfortunes and evils of the present day that we have to witness the disgraceful licence of the periodical press; and I do lament, from the bottom of my heart, that the unfortunate gentleman deceased should have had any concern with writings of this description,—for it is impossible to shut your eyes against the evidence by which it is proved that Sir Alexander Boswell was engaged in these writings, and that the prisoner at the bar was the object of his attacks.

You will, therefore, keep these considerations in your view, and pronounce such verdict as the circumstances of the case shall seem to you to authorize.

The Jury, without retiring, after a few moments consultation, returned their verdict *viva voce*, by their Chancellor.

Sir John Hope.—My Lord, The Jury unanimously find Mr Stuart *Not Guilty*.

The verdict was received with strong marks of satisfaction by the audience.

(Interlocutor of the Court.)

The Lord Justice-Clerk, and Lords Commissioners of Justiciary, in respect of the foregoing verdict, assoilzie the pannel *simpliciter*, and dismiss him from the bar.

D. Boyle, I. P. D.

APPENDIX.

APPENDIX.

No. I.

EXTRACT LETTER from WILLIAM ADAM, Esq. M. P. now the Right Honourable WILLIAM ADAM, Lord Chief Commissioner of the Jury Court, to Mr STUART.

(*Produced with Defences for Mr Stuart.*)

My Dear Sir, *Bloomsbury Square, April* 17, 1810.

I have read with great attention your letter to James Loch of the 13th instant, and I cannot resist letting you know what my feelings are as to the very great obligation all the country, and particularly that part of it connected and benefited peculiarly by the Great North Road, are under to you. These have been most disinterested and kind exertions. Your services about the whole business of the Ferry have likewise been most important, and are, in my opinion, equally entitled to the public thanks, which any trifling personal accommodation to yourself could never have excited you to, without the general and liberal inclination to promote the public good.

Yours, most faithfully,
WILLIAM ADAM.

No. II.

EXTRACT LETTER from Ditto to Ditto.

My Dear Sir, *Bloomsbury Square, April* 25, 1811.

You did admirably in perpetuating the tolls, and we who are in the line, as well as the whole country, are under the

greatest obligations to you (who are not) for the great aid you have given us. Indeed, without your efforts, both the road and Ferry must have gone to the dogs.

Yours, most sincerely,
WILLIAM ADAM.

No. III.

RESOLUTIONS of a GENERAL MEETING of the Noblemen, Freeholders, &c. of the Western District of Fifeshire.

In a General Meeting of the Noblemen and Gentlemen, Freeholders, Justices of Peace, Commissioners of Supply, and Heritors of the Western District of the County of Fife, held within the Town-house of Dunfermline, 4th January 1816, in consequence of a letter of requisition inserted in all the Edinburgh newspapers, published on, and since 29th December 1815, to consider of the proper steps to be taken upon occasion of the Lord Lieutenant of the county having informed Mr James Stuart, younger of Dunearn, that his name is omitted from the new Commission of the Peace for the County of Fife, lately passed under the Great Seal, at the instance of the Lord Lieutenant; which requisition is signed by the Right Honourable the Earl of Moray; the Right Honourable the Earl of Elgin; the Right Honourable the Lord Chief Commissioner; Sir Charles Halkett of Pitfirrane, Baronet; Mr Strachan Blackwood of Pitreavie; Dr Robertson Barclay of Keavil; Mr Hunt of Pittencrieff; Mr Erskine of Kinedder; Mr Scotland of Luscar; Mr Walker of Sunnybank; and Mr Cuninghame of Duloch.

SEDERUNT.

The Right Honourable Francis Earl of Moray,
The Right Honourable Thomas Earl of Elgin and Kincardine,
The Right Honourable the Lord Chief Commissioner,
Sir Charles Halkett, Baronet, of Pitfirrane,
Captain R. H. Moubray, R. N. and C. B.
Dr James Robertson Barclay of Keavil,
James Hunt of Pittencrieff,
John Cuninghame of Duloch,
Thomas Scotland of Luscar,
John Scotland, younger of Luscar,

Robert Walker of Sunnybank,
Alexander Colville of Hillside,
Alexander Colville of Middlebank,
Major David Wilson, Provost of Dunfermline,
George Aitken, younger of Hill of Beath,
John Sutherland of Eastfield,
Robert Wemyss of Cuttlehill,
James Moodie, younger of Cocklaw,
Captain John Wardlaw, Dean of Guild for the Guildry of Dunfermline.
Thomas Mill of Blair,
Henry Bardner of West Saline,
Andrew Colvill of Barnhill,
William Thomson of Stevensons Beath,
Dr James Stenhouse of Comely Park,
Robert Russell of Drumtuthil,
Hugh Gray of Bushes,
James Stenhouse of Northfod,
John Purvis, younger of Lochend,
James Douglas of Garvochwood.

The EARL of MORAY chosen Preses.

The Preses communicated to the meeting the following documents:

1st, The before-mentioned letter of requisition.

2d, Letter from Mr Thomas Horsburgh to Mr Stuart, dated 25th December 1815, which is in the following terms:—

My Dear Sir, *Cupar, December* 25, 1815.

I am favoured with yours of the 23d last night. I am not at liberty, at present, to mention what names appear, or do not appear, in the new Commission of the Peace. I understand Lord Morton is to call the Magistrates together, on purpose to open it; and the moment that is done, I will send you a full list of the whole nomination.

You was appointed a Justice of Peace, by an interlineation in the commission which passed in 1797, and which took place in July 1800, by the commission having been sent to London, and the seal being again applied by the Chancellor. Lord Kellie is in possession of the list of the new nomination.

I always am, with the highest regard,
My dear Sir,
Yours most faithfully,
THOs. HORSBRUGH.

3d, Copy Letter from Mr Stuart to the Lord Lieutenant of the county in the following terms :—

North Charlotte Street, Edinburgh,
My Lord, *December* 27, 1815.

I am sorry to be under the necessity of addressing your Lordship, that I may, from the most authentic source, obtain the knowledge of a fact, upon which I shall have occasion to act, if it turns out as it has been represented to me.

Mr Cheape of Stratyrum having informed me, that my name is left out in the new Commission of the Peace, which your Lordship has obtained for the county of Fife; and that Lord Kellie, who has the list of the Justices of Peace in his hands, told him so, I wrote to Mr Horsbrugh, general clerk to the Justices of Peace at Cupar, to ascertain the fact. He informs me, in reply, that Lord Kellie has a copy of the list; and he adds, that he is not at liberty at present to mention what names appear, or do not appear, in the commission; and that he understands that your Lordship is to call the Magistrates together, on purpose to open it, and the moment that is done, he will send me the full list.

May I request of your Lordship to take the trouble to supply me with the information, which I have failed in obtaining from Mr Horsbrugh, in order that I may possess a correct knowledge of the fact from the most authentic source; and I trust that I am guilty of no impropriety in endeavouring to ascertain it, or in adding, that if your Lordship declines to make the communication which I solicit, I shall consider the fact to be as Mr Cheape has represented it.

I have the honour to be,
My Lord,
Your Lordship's most obedient servant,
JA. STUART.

The Right Honourable the Earl of Morton,
Lord Lieutenant of the County of Fife.

And 4th, Letter from the Earl of Morton to Mr Stuart, dated 28th December 1815, in the following terms :—

Sir, *Arniston, December* 28, 1815.

Your letter of the 27th, which followed me from Dalmahoy to this place, arrived too late in the evening for me to think of immediately dispatching your messenger in such weather; I have, therefore, detained him until this morning.

I can have no hesitation, Sir, *in satisfying your curiosity*, by informing you, that the information which you have received from Mr Cheape of Stratyrum is correct, and that your name is not included in the new Commission of the Peace for the county of Fife.

I have the honour to be,

Sir,

Your most obedient humble servant,

MORTON.

James Stuart, Esq. junior of Dunearn.

The Meeting having had the fact of Mr Stuart's exclusion from the Magistracy of this county thus ascertained, and being most anxious to adopt the most speedy and efficacious, and, at the same time, the most respectful means of securing Mr Stuart's services to the district as a Justice of the Peace, upon the motion of the Lord Chief Commissioner, seconded by the Earl of Elgin, Resolved unanimously to make it known to the Lord Lieutenant of the county:

That Mr Stuart has been fifteen years a Justice of Peace for the county of Fife:

That he has, during these fifteen years, diligently and regularly acted in that capacity for this district, in which his country residence and a principal part of his property is situate:

That he has consequently given regular attendance at the Justice of Peace Courts held at Dunfermline:

That he has never permitted his business in Edinburgh, his necessary residence there during the greatest part of the year, or his numerous and important occupations, to interfere with his attendance, or with his duty as a magistrate of the county of Fife, either at the head town of the district, or elsewhere:

That Mr Stuart's conduct as a Justice of the Peace has been distinguished for knowledge, ability, and integrity:

That his unremitting activity and diligence, combined with his other superior qualifications for the office, will render his exclusion from the magistracy (in which his conduct is not only unimpeached, but is highly meritorious) an irreparable loss to the western district:

That besides the ordinary duties of Justices of Peace, there are certain local duties of the greatest importance to the public, which the Justices of the western district of the county of Fife have to discharge:

That those duties have in part been long attached to the office, and arise in part out of the act of Parliament which

passed in 1809, for the improvement of the Queensferry passage:

That many of the most important regulations for the good government of that Ferry require the authority of a Magistrate as well as that of a Trustee:

That Mr Stuart has, ever since the act of Parliament passed for the improvement of the Ferry, given constant attendance at the regular meetings, and on many other occasions:

That it is greatly owing to his unremitting exertions, in the double character of Magistrate and Trustee, that the public enjoy the benefit of that regularity, good conduct, and ready service now afforded at that passage:

That this Meeting, anxious as they are, and as they have already expressed themselves to be, to take the most effectual and respectful mode of securing the continuance of Mr Stuart's most important and unremitting services to this district, to the county, and to the public at large, hereby empower and direct the Earl of Moray, as their preses, to take the earliest opportunity of conveying this minute to the Earl of Morton, his Majesty's Lieutenant for the county of Fife, not doubting, that, when these things are brought thus distinctly to his Lordship's knowledge and observation, that he will adopt the proper course for having the name of James Stuart, Esquire, younger of Dunearn, inserted in the new Commission of Peace for Fifeshire:

That the preses do request a written answer to this communication on or before Tuesday next, that the district may be informed whether their recommendation is to be complied with:

That the Earl of Moray, the Earl of Elgin, the Lord Chief Commissioner, Mr William Erskine, Advocate, Mr Cuninghame, Advocate, and Mr Scotland, be a committee, to take such further steps as may be necessary, and to apply to the Convener and Sheriff-depute for a meeting of the county, if the committee should deem it proper:

That the committee be an open committee for all the gentlemen in the western district, to whom the requisition for this meeting was addressed:

That they do meet at Edinburgh or elsewhere, as the Convener may think most advisable:

That the Earl of Moray be the Convener.

Upon the motion of the Lord Chief Commissioner, the thanks of the meeting were unanimously voted to the Earl of Moray for his conduct in the chair; and, upon the motion of the Earl of Elgin, the thanks of the meeting were also unani-

mously voted to the Lord Chief Commissioner for the services which he has rendered to the district, and for the trouble which he has taken upon the present occasion.

(Signed) MORAY, *Preses.*

Extracted upon this and the ten preceding pages, by
(Signed) DA. BLACK, *Clerk.*

Drumsheugh House, January 9, 1816.

The committee, in consequence of a summons by the Earl of Moray, their Convener, met here this day.

Present,
The Earl of Moray,
The Earl of Elgin,
The Lord Chief Commissioner,
William Erskine, Esq. Advocate,
J. Cuninghame, Esq. Advocate,
Thomas Scotland, Esq. W. S.

The Earl of Moray read a letter from the Earl of Morton as follows :—

Dalmahoy, 6th January 1816.

My Dear Lord—I received yesterday the honour of your Lordship's letter of the 5th, inclosing, by the direction of the very respectable meeting which took place at Dunfermline on the 4th of this month, the minutes of the proceedings of that meeting.

Having, at the instance of the county of Fife, applied for a new Commission of the Peace, it became incumbent on me, on my official responsibility, to recommend to the Lord Chancellor, for insertion in that commission, a sufficient number of such persons as appear to me to be properly qualified for discharging the duties of Justices of the Peace. I have accordingly done so, and I am convinced that the gentlemen whom I have so recommended will be found fully adequate to the discharge of these duties.

Since, however, so many gentlemen for whom I entertain the highest respect, have expressed so earnest a wish for the insertion of the name of Mr Stuart in the commission, I shall avail myself of this opportunity to testify that respect, by transmitting their recommendation to the Lord Chancellor. I have the honour to be, with great truth, my dear Lord, your Lordship's faithful and obedient humble servant,

(Signed) MORTON.

Lord Moray then read his Lordship's letter in reply, as follows :—

Edinburgh, January 8, 1816.

My Dear Lord—On my return from Mrs Douglas's funeral, I received your Lordship's most polite letter; and it will give me the greatest satisfaction to make the contents of it known to all the gentlemen to whom your Lordship refers. I have the honour to remain, my dear Lord, yours sincerely,

(Signed) MORAY.

The committee resolved to transmit this minute to Mr Black, the clerk of the meeting held at Dunfermline on the 4th instant, with instructions that he should send a copy of this minute to every gentleman who was present at the meeting at Dunfermline on the 4th instant.

No. IV.

LETTER—The Earl of Kellie to Mr Stuart.

(*Produced with Defences for Mr Stuart.*)

My Dear Sir, *London, 1st December* 1819.

Permit me to tell you, that it gives me great pleasure to understand that you and Lord Morton have shaken hands, so that all unpleasant bygones will be forgot, and that you are to take your proper situation in our Yeomanry. Tho' you and I differ somewhat in politics, yet I am sure we will never differ in matters that regard the good of our county, and, I may say, of the country at large. Believe me, with much esteem,

My Dear Sir,
Yours, most obediently,
KELLIE.

No. V.

EXTRACT from an Article in the *First* Number of the *Glasgow Sentinel*, entitled, "Mr James Stuart and the Lord Advocate."

Our readers will recollect that we sometime ago introduced Mr Stuart to their notice, on the occasion of his mean and unmanly attack on Mr Stevenson. They are perfectly

aware that the subject matter of Mr Stuart's complaint against that gentleman was the appearance of a paragraph in the *Beacon* newspaper, which no man who read it could conceive either to be immoderate or untrue. At the time of her late Majesty's threat to visit the Scottish metropolis, that publication, in descanting on the characters of the persons most likely to welcome her, stated that they (the conductors of the *Beacon*) *did not think that any one above the rank of Mr James Stuart would desire to be presented to her*, or words to that effect. It is true that the allusion to Mr Stuart's rank, which he is very anxious to talk about on all occasions, is highly ironical; but surely there is nothing in it wonderfully offensive. Be that as it may, the fine feelings of the descendant of the Stuarts could not withstand it. He waited on Mr Stevenson, the supposed editor of the paper, remonstrated with him, and ultimately launched forth into a correspondence on the subject, in which, every body knows, Mr Stevenson conducted himself like a man of sense and delicacy, and Mr Stuart in a manner rude and every way unhandsome. The sequel of his behaviour confirmed this. He attacks Mr Stevenson in the streets of Edinburgh, in the most brutal manner, and attempts to belabour him with a horse whip, while his own servants, brought from Fife for the express purpose, were employed to hold Mr Stevenson's hands from any retaliation. It is needless to offer any proof of these facts: they are perfectly notorious, and reluctantly admitted by the aggressor himself.

What did Mr Stevenson do to take amends for this gross outrage on his person? Just what any gentleman of his respectability should have done, and what no person of the least claim to the character of a gentleman could have avoided. He sought satisfaction from his antagonist. But, oh shame to the dishonoured blood of the house and name of Stuart, he with a meanness only discernible in low life, and in humble society, sought his personal safety in the most glaring cowardice! The blustering and the passionate are always in the rear of danger. James Stuart was consequently posted as a coward and a poltroon. The very rabble and oyster-women on the streets of Edinburgh read the label, mused upon the circumstances, and blushed for their *patriot*.

We are not the advocates of duelling: God forbid. We would not stain our hands nor our consciences by any participation in its murderous subterfuges. But if ever there was a case that called loudly for satisfaction, it was the case of Stevenson. And yet it was scarcely worth his pains.—When

the heartless ruffian seeks for revenge, for ideal injury, by ploying his minions to hold the arms of the person he abuses, we would consider him utterly undeserving of the satisfaction of a gentleman, and we would desire to hold him up to the unalloyed opprobrium of mankind.

Whether the *Beacon* indulged in a superabundant quantity of personal hostility towards Mr Stuart, subsequently to his affray with Mr Stevenson, we shall leave the world to determine. But this we will observe, that, from the way in which Mr Stuart conducted himself, he could not have been too severely exposed. The man who acts unmanly—the *patriot* who degrades himself like a traitor—the bullying bravado who is ever the tyrant in a place of safety, must lay his account to meet the hisses of society. The *Beacon* may possibly have o'erstepped the line of propriety on other subjects, and we do not defend it. It may have used a vulgar sentence where the satire of an elegant one might have been felt more poignantly; but in this case its personality was justifiable—its warmth and violence were excusable.

No. VI.

EXTRACTS from the *Answers* for Robert Alexander and William Borthwick, Printers in Glasgow, to the *Condescendence* for James Stuart, Esq. in the Action of Damages at his Instance against them.

—"The Respondents generally deny the truth of the libel. They affirm, that the statements in the newspaper complained of are true."—

—"The Respondents offer to prove, by the evidence of persons of high character and skill in the laws and practice of honour, that the conduct of the pursuer, in regard to the affair with Mr Stevenson, was most ungentlemanly, and deserving of every condemnation.

In respect whereof, &c.

(Signed) For Mr D. M'Neill,

John Hope."

No. VII.

LETTER "To the EDITOR of the SENTINEL," dated 25th January 1822, signed MARK TOD.

(*From the Glasgow Sentinel, Wednesday, January* 30, 1822.)

Sir,

The Whig Festival and Radical Rally took place here last night, no less a person than "the conquering hero," Sir Ronald Ferguson, M. P. for Kirkaldy, in the chair. They told me, that about 260 gentlemen sat down to dinner, but I presume they were counted near the witching hour of night, when two eyes are as good as four. Amongst the GENTLEMEN, however, I remarked your peculiar friend, the magnanimous Mr James Stuart, but it was not HE who gave "the Liberty of the Press." The rest of the GENTLEMEN were, in general, decently clothed; which, when I had time to observe it, dissipated the alarm and suspicion with which I pressed through the crowd, one hand on my watch chain and the other on my pocket, repenting most heartily of my idle curiosity.

The GALLANT GENERAL, as they called him, first, very modestly expressed his inability to perform that duty which he had DELIBERATELY undertaken, or "to do justice to the situation in which he FOUND himself placed;" but this unlucky DISCOVERY did not PUT HIM OUT of the chair, or his speech, for in an EXTEMPORARY oration, he recommended UNION to prevent ruin, but amongst WHOM I could not learn. A very shrewd dark-looking man significantly hinted, that it was a guarded allusion to UNITED SCOTSMEN. Sir Ronald, however, concluded by giving very decently, without any wink or other indication, "The King." After a toast or two, "THE CONQUERING CHAIRMAN" next proceeded to eulogise the public principles and PRIVATE CHARACTER of Mr Fox; the latter, at least, I thought rather ticklish ground, but the Whigs cheered, and all was right, for I am no connoisseur in Whig morality; so "The memory of Charles James Fox" was ordered to be washed down in solemn silence: "Little said soonest mended," (thought I,) and swallowed my wine. I forgot, however, to mention, that the Conquering General, not finding enough, I fancy, to say for the old dead Whig, jumbled in some devilish severe hits against the present ministers, and told us that HE (the Conqueror) CONDEMNED THEM. So all is over with THEM.

The Gallant Conqueror next touched up Parliamentary Representation pretty sharply, but made no allusion to Kirkaldy, which you will admit was handsome on his part. He then gave, (and he spoke English like any cockney who has lived in London all his life,) "A fair, free, and fool representation in Parliament," and the fiddles struck up "Tullochgorum." The Conquering General and Gallant Chairman concluded what he found to be his allotted portion of the toasts, by giving the health of one on whom the country should turn their eyes in the hour of danger, "Earl Grey;" and the waggish cat-gut tormentors struck up the Pretender's song of "Charlie is my Darling." I thought this Noble Lord had become quiet, but after this hint we must keep a sharp eye upon him.

Down sat the Reviewing General, and up rose the Reviewing Lord Rector, Mr Jeffrey, who in more words than a less glib gentleman could have pressed into the service on such a subject, gave "Sir Ronald Ferguson," and the Band, as previously instructed, played "The Conquering Hero!" The Conquering Hero returned unblushing thanks, and with a battle-dore report, sent back the compliment by proposing the health of "Our Excellent Croupier, Mr Jeffrey." (Great Applause.) The Croupier's croup was in excellent motion, and he was up in a moment, and was all modesty and gratitude.

Then we had, in strange succession, toasts, and speeches, and healths, and memories, too many to remember, till the dull series was relieved by a speech from Mr Cranstoun, which I regret he did not deliver in Greek, as was originally intended. It would have been more appropriate to Grecian liberty than a harangue upon modern Greeks in a modern language. I don't think he alluded to the number of slaves in ancient Athens, but that perhaps was properly omitted; he concluded, by giving, for a toast, "The re-establishment of the independence of Greece;" this was most heroically received, but passed without a Tune, as the fiddlers had no Greek music furnished;—one of them, who is celebrated for the faculty of punning with his fiddlestick, and who slyly coupled Earl Grey with the Pretender, proposed to play the tallow chandler's song, "On melting day when grease is boiling," but it was deemed personal to several respected Whigs, and an extinguisher was put upon what Tom Moore calls "the light of the song."

Charles Fox's name and memory is a very convenient excuse for all subjects whatsoever; and as all Whigs are men

of TALENT, we had, as one Doctor Maclagan, who sat near me, very aptly observed, a very copious discharge of oratory. My next neighbour, on the right, whom I suspected to be a weaver, from the manner he expressed his joy, by the alternate fling of either arm, and the successive kicks with either heel, assured me that there were three DOZEN of prime toasts given, and short, and long, five DOZEN of speeches. Many of the toasts you will see in the papers. The army and navy were given, but not another FIGHTING man (unless you will allow the Director of Chancery, my Lord Rosslyn, who was remembered when toasts began to run dry,) until the gallant and "excellent Croupier," whom Lord Byron has celebrated for some bold exploit with Anacreon Moore, (the seconds, no doubt, singing the beautiful air of "Fly not yet,") arose and gave the health of Mr JAMES STUART! Mr James acknowledged, in grateful terms, the honour which he had RECEIVED from such a quarter. So now he has a FEATHER to stick in his cap, to bear the other company.

Imagine my gratification to be seated at so small an expence, at an elegant dinner, amidst a galaxy of talent; and my mouth scarcely well closed upon my morsel of cheese, again wide expanded for a MORCEAU of eloquence. After all, although I am no judge, I think these MEN OF TALENT very middling sort of bodies. It is not, perhaps, becoming in one such as me to doubt the assurances which we have from THEMSELVES. But if you could convince me that they may possibly be mistaken; and, if thus relieved from the WEIGHT of SUCH authority, I am asked my opinion, why, I must give it honestly, and say that I never was present at such a scene of humbug, fulsome flattery, and foul vituperation, in the whole course of my life. Such an olio of vulgarity and impertinence, with an occasional pepper-corn of genius, I have never before been partaker of. Low must that party be sunk, that could not meet under more respectable auspices than Sir RONALD FERGUSON; and where such a SET were permitted to be prominent. Talents! "behold there arose a talent of LEAD." There are a few men of commonplace genius amongst them, there are also a few smart men of literary SLANG. But duller fellows than the bulk of those who had the effrontery to presume to talk, must alone be sought for amidst the swamps of Old Batavia.

I am, Sir, your obedient humble servant,

MARK TOD.

No. VIII.

THE LATE LIEUTENANT JAMES STUART.

(From the Glasgow Sentinel, Wednesday, Feb. 20, 1822.)

To be dragged into a contest with any individual is an evil; but the evil is aggravated when the opponent is one not in the most blooming estimation. This we advance as a general principle. We now freely and ingenuously confess our error, in having repeated, in our columns, any thing regarding Mr James Stuart; for had the gift of prophetic anticipation been ours, and could we have foreseen all that the *gentleman* has done for himself, we should have left his conduct to himself as the more successful satirist.

This *man of letters* has printed a pamphlet, from which any one who will accept of it *gratis* may learn that James Stuart was actually enrolled as a *fighting* man, in the western troop of Fifeshire Yeomanry Cavalry. It appears that this *heroic* Lieutenant, contrary to a Regimental Order, *called out* the troop in which he serves for a drill and a jollification at the Stuart's arms. The Commanding Officer reported this violation of discipline to the Lord Lieutenant, who directed that he should be reprehended in orders, and these orders to be read at the head of every troop. The Lieutenant rides straight from a drill, writes to the Commanding Officer, and tells him that his fingers are *cold*, (doubtless to convince him of the *coolness* with which he wrote,) and overwhelms him with compound misfortune; for he tenders his resignation, and warns him that he will no longer *mount a Trumpeter*. The resignation is *immediately* accepted. So much for the *Lieutenant* himself; but the *Trumpeter* is not yet disposed of.

The magnanimous yeoman has a threefold defence. The Captain's sickness, his own ignorance, and his exemplary conduct on the day *libelled*; for he states—and we believe him—that he was the *last* man to *retreat* from the Stuart's arms. Brother M'Culloch is a political economist, and we understand has *two* pupils, and he will bear us out in the assertion that every *thing* will find its own level. To raise the value of any *thing* by any *act* is hopeless. Hence the attempt of Lord Rector Jeffrey to give a *lift* to Mr James Stuart at the Fox dinner, was defeated by the laws of gravity; he might with equal success have exerted his puissant powers to *lift* the celebrated fat ox of Duncarn.

We noticed Mr James Stuart as an active, every-where-busy, bustling Whig ;—as a *publicised* character who courted notice. It was under error that we noticed him at all, and we repeat our avowal of regret.

No. IX.

LETTER—Sir Alexander Boswell, Bart. to Robert Maconochie, Esq.

Edinburgh, 24th March 1822.

My Dear Maconochie,

I received your very kind note, but I was so worn out, and just setting out, that I could not come to see you, and it was too late to appoint you to come to me.

I must now address you on a subject of a delicate nature, which I do from a confidence in your friendship.

About ten days ago Mr Stuart of Dunearn went to Glasgow, and, by the instrumentality of certain persons, one formerly a partner in the Clydesdale Journal, (now the Sentinel,) broke open the editor's desk and carried off his papers, and, I understand, amongst others, some squibs in my handwriting. Last night, on my arrival, I received a letter from Lord Rosslyn, that he wished me to appoint an hour as early as possible, that he might make a communication to me ; this, I suppose, is in reference to some of these squibs. I do not know who the offended party may be, but even if it should be Mr James Stuart himself, I shall give him a meeting. In order, however, to obviate many of those circumstances which follow such transactions, I mean that the meeting shall take place on the Continent,—say Calais ; and I wish to put your friendship so far to the test, as to request you to be my friend on this occasion. I saw your brother this morning,—and his Lordship seemed to think that you would acquiesce. * If I had deemed it expedient to meet my man here, John Douglas would have gone out with me ; but, if I should be the successful shot, I should not like the after proceedings of our Courts of Law, and therefore wish to pass beyond their jurisdiction. I know nothing of particulars yet, but write in pru-

* It has occurred as proper to be explained here, that, in that part of his speech which refers to this letter, Mr Cockburn did not profess to quote its *words*, but only to give its substance ; and, therefore, that the passage printed in Italics, on p. 41,. should not have been marked as a quotation.

dent anticipation, and shall write again so soon as I know them.

I know this is perhaps the greatest favour that can be asked of any man, but, by this arrangement, you will be implicated in less trouble, and you won't mind a trip to France. If my wish is acceded to, I would propose the meeting to take place about fifteen days hence, as I wish to make a slight arrangement respecting my estate, and legalize it by going to kirk and market, so that you may write on receipt of this, and if I must go sooner than I can receive yours, it is only a letter thrown away.

I am,
Dear Maconochie,
Your's very faithfully,
(Signed) ALEXANDER BOSWELL.

Edinburgh, 7th June 1822.—This is the Letter referred to in my deposition of this date. *

(Signed) J. BALFOUR.
AND. MURRAY, *Comr.*
WM. S. FRASER, *Clerk.*

(Addressed thus on the envelope:)

Edinburgh, March Twenty-four 1822.

Robert Maconochie, Esq.
52, George Street,
Portman Square,
London.

J. P. Grant.

Delivered into my hands by Robert Maconochie, Esq. this fourteenth day of May 1822.

(Signed) J. BALFOUR.

Edinburgh, 7th June 1822.—This is the cover of the Letter referred to in my deposition of this date.

(Signed) J. BALFOUR.
AND. MURRAY, *Comr.*
WM. S. FRASER, *Clerk.*

* See Trial, p. 19.

No. X.

EXTRACT LETTER—Mr Stuart to James Gibson, Esq.

Prince's Court, London,
Thursday, March 28, half-past 4, P.M.

My Dear Sir,

I am at the Parliament Street Hotel, but be so good as to address *here*. Let me know what is said, however bad they may represent me. I would, if the worst has happened, avoid wounding the feelings of those that remain, by allusions in the Papers to the cause of the meeting. The trial will develope the truth; but if Sir Alexander recover, as I trust he will, you know the facts; and I trust to you and ——— doing what is fit. I would, however, do nothing while Lord Rosslyn is in Scotland, without his sanction. My debt to him can never be paid.

I hope you remembered to retain Messrs Jeffrey, Moncreiff, Cockburn, and that, if the worst has happened, notice should be given of my determination to stand trial on the *earliest occasion*.—

No. XI.

LETTER Mr Stuart to Mr Gibson.

Hotel de Londres, Place Vendome,
Paris, April 5, 1822.

My Dear Sir,

It would only annoy you to tell you how sincerely I am obliged by your kindness in writing to Mr Campbell. I am really so distressed to-day as to be almost incapacitated for any thing, and did not intend to send you a line, but to refer you to ——— ———. But I am so anxious that a trial should be insisted on, as necessary to exculpate me *with all*, that I wish you to consider well what steps ought to be taken. The whole accounts I have seen are erroneous; and even those favourable to me, or intended to be so, give not the half of my case. It is impossible, after the event which has happened,

to write a word on the subject; and I know of no way of accomplishing an object so necessary for me, but by judicial investigation. I thought a trial would *necessarily* follow, but I learn from Mr Clerk that it is not so. Write to Mr Campbell's care. I have begged to be allowed to return to London; for it is impossible for me to enjoy anything here, although all are most kind, especially ——— ———, who has made me feel as if I was in my own house.

I am,

My Dear Sir,

Yours, most faithfully,

JA. STUART.

No. XII.

COPY NOTE from Mr Stuart to his Excellency the Right Honourable Sir Charles Stuart.

Mr Stuart presents his compliments to Sir Charles Stuart, and begs leave to acquaint his Excellency, that, with a view to his having more ready communication with his legal friends in Britain, he intends to-morrow to set out for Calais, to the Hotel de Meurice.

If he does not afterwards proceed directly to Britain, he will take the liberty of informing his Excellency where he is to be found while he remains in France. Notice was instantly given in the proper official quarter, on Mr Stuart's leaving Scotland, of his readiness to surrender on the day of trial; his only object in leaving Britain being, if possible, to avoid the previous confinement.

Mr Stuart embraces this opportunity of offering his grateful acknowledgments to Sir Charles Stuart for having allowed him the honour of an interview.

Hotel de Londres, Place Vendome,
Wednesday, April 17, 1822.

No. XIII.

LIST of WITNESSES cited on the part of the Pannel.

1 The Right Honourable James Earl of Rosslyn.
2 The Honourable William Erskine, Lord Kinedder.
3 Roger Aytoun, Esq. of Muriston, writer to the Signet.
4 Richard Mackenzie, Esq. of Dolphington, writer to the Signet.
5 Dr James Robertson Barclay of Keavil.
6 John Douglas, Esq. of Lockerby, one of the Commissioners of Excise for Scotland.
7 Arthur Campbell, Esq. writer to the Signet.
8 James Gibson, Esq. of Ingliston, writer to the Signet.
9 Mr William Henderson, writer, Hamilton.
10 Mr William Spalding, writer, Pitt Street.
11 Mr Felix Dougherty, now or lately clerk to the said William Henderson.
12 Loudon Robertson, journeyman printer, lately in Glasgow, now in Dundee.
13 William Blair, Esq. of Blair, Ayrshire.
14 Francis Walker, Esq. of East Fortune, writer to the Signet.
15 William Horne, Esq. Sheriff-depute of the shire of Haddington.
16 Hay Donaldson, Esq. writer to the Signet.
17 Walter Cook, Esq. writer to the Signet.
18 Adam Duff, Esq. Sheriff-depute of Edinburghshire.
19 Dr Andrew Coventry, Professor of Agriculture in the University of Edinburgh.
20 William Gulland, Esq. Strypeside, Fifeshire.
21 James Nairne, Esq. of Claremont, writer to the Signet.
22 Alexander Hunter, Esq. writer to the Signet.
23 Robert Maconochie, Esq. son of the late Lord Meadowbank.
24 Robert Liston, Esq. surgeon, George Street, Edinburgh.
25 William Smith, servant to James Stuart, Esq. younger of Dunearn.
26 Thomas Allan, Esq. banker in Edinburgh.
27 Dr George Wood, surgeon in Edinburgh.
28 Adam Rolland, Esq. writer to the Signet.
29 George Bruce, sheriff-officer in Edinburgh.
30 William Ritchie, Esq. solicitor of the Supreme Courts in Edinburgh.

31 Charles Dalrymple Gairdner, Esq. manager of Hunter and Company's bank, Kilmarnock.
32 David Erskine, Esq. of Cardross.
33 Thomas Horsbrugh, Esq. of Lathockar, Fifeshire.
34 Walter Fergus, Esq. of Strathore, by Kirkaldy.
35 Alexander Ure, writer in Glasgow.
36 John Galloway, clerk to the said Alexander Ure.
37 William Bankhead, clerk also to the said Alexander Ure.
38 John Fisher, extractor in the Burgh Court of Glasgow.
39 William Lawrie, writer in Glasgow.
40 John Clerk, Esq. of Eldin, Advocate.
41 William Murray Borthwick, late printer in Glasgow.
42 Alexander M'Grigor, Esq. writer in Glasgow.

Lastly—The whole of the witnesses (except Miss Boswell) named and designed in the list for the Crown, annexed to the indictment, who are not named in this list, and who are here held as repeated.

No. XIV.

INTERLOCUTOR of RELEVANCY, remitting the Libel and the Pannel to an Assize.

[Omitted to be inserted at p. 44.]

The Lord Justice-Clerk and Lords Commissioners of Justiciary, having considered the indictment at the instance of his Majesty's Advocate for his Majesty's interest, against James Stuart, pannel, find the same relevant to infer the pains of law, excepting in so far as it charges the pannel with the unlawful design of challenging others of the lieges to fight a duel or duels; allow the pannel a proof in exculpation and alleviation; and remit him, with the indictment, as found relevant, to the knowledge of an assize.

(Signed) D. BOYLE, I. P. D.

Printed by George Ramsay & Company,
Edinburgh, 1822.

THE LATE MR. JAMES STUART, ONE OF THE INSPECTORS OF FACTORIES.

Most of our contemporaries have announced the death of this somewhat remarkable gentleman. His life was passed in much bustle; he was at one time a prominent actor in Scotch politics, and he had the misfortune to be engaged in a political duel in which the late SIR ALEXANDER BOSWELL fell. Mr. Stuart was the eldest son of the late Dr. Charles Stuart, of Dunea, who was at one time, we believe, presumptive heir to the Earldom of Moray, a gentleman of high literary attainments, who ran rather an eccentric career. [illegible] ed piety induced him to enter the Scottish Church as a clergyman, and he became by marriage the son-in-law of the celebrated Dr. Erskine, of Carnock, the correspondent of Bishop Warburton, and long the revered leader of the Evangelical party in the General Assembly of the Scottish Church. Dr. Stuart afterwards left the Church of Scotland, on principles very similar to those which have lately influenced another scion of a noble house, THE HON. AND REV. BAPTIST NOEL. Like Mr. Noel, Dr. Stuart united

[illegible] Lord Brougham's personal friends had stronger claims on the Chancellor than himself. It was not in Mr. Stuart's nature to submit to neglect; and if he was a firm and hearty friend, he was also a most dangerous enemy. His fervour in anything he undertook, was only surpassed by his persevering energy. He knew all Lord Brougham's weak points, and he set himself to dissipate the halo which had long concealed from the public the glaring defects in the character of Henry Brougham. Whether it were a correct opinion or not, we have no doubt of the fact, that at one time Lord Brougham considered that he had suffered more in reputation from the weapons, furnished against him to the daily press by Mr. Stuart, than by any other individual. As Editor of the *Courier*, he had one paper at his command, and he was understood to be in communication with others.

On other occasions Mr. Stuart exhibited the same restless energetic character; and before his lamentable duel with the son of Dr. Johnson's biographer, he signalized himself by many newspaper contests in Scotland, in one of which the late Earl of Morton figured. Mr. Stuart was successful. His name was restored by the Lord Chancellor Eldon to the commission of the peace, from which it had been omitted by the Lord-Lieutenant of Fife; but we believe the contest afterwards terminated in something like a personal assault in the public streets. It was remarked as a striking circumstance, that on his trial Dr. Johnson's argument in favour of duelling, as recorded and eulogized by Boswell, was cited in defence of the man who had shot Boswell's eldest son.

Mr. Stuart was fond of society, and of a very convivial disposition; and, like Mr. Macculloch, the political economist, and others of his friends, seemed to delight in perpetuating that species of exploded hospitality, which, for the most part, now only lives in the memory of a past generation.

The Record – 8 Nov. 1849

order of chivalry of the same name to which he [illegible] was rebuilt by St. Louis in 1245, who gave

At Edinburgh, on the 2d inst., ELEANOR MARY [illegible], widow of JAMES STUART, Esq. of Duneaan, in her 84th year.

rather scarce, had some advance. Lamb and veal also rather dearer. The prospect of early grass-feed has occasioned a rise in lean beasts, particularly those of the Scot kind, many droves of which are shewn on Epping forest. The lambing season on the South and Wiltshire Downs has been a favourable one; but not so in Lincolnshire, and adjoining districts, where the loss of ewes has been considerable. The wool market is brisker, and commands rather more than last month's prices. Rape for seed is pushing into bloom, and promises a good crop on the high lands, but the plants in the Fens were mostly destroyed by the floods.

PRICE OF STOCKS, from March 28 to April 3.

	Thurs.	Frid.	Satur.	Mond.	Tues.	Wed.
Bank Stock,...	——	——	——	——	——	——
3 per Ct. Red	——	——	——	——	——	——
8 per Ct. Cons.	80 1-8 ⅜	80 1-8 80	79 7-8 80 5	79 ⅝ ⅝	79 ⅝ ⅜ 5-8	79 ⅝ 1-8 80
3½ per Cent, ...	——	——	——	——	——	——
4 per Cent, ...	——	——	——	——	——	——
5 per Ct. Navy,	103 5-8 ⅜	103 5-8 3-8	103 3-8 5-8	103 1-8 ¼	1 3¼ 1-8	103 1-8 ⅜ 3
Bank Long An.	——	——	——	——	——	——
5 per Ct. Scrip.	——	——	——	——	——	——
Im. 3 p. Ct. An	79 7-8	80	——	——	——	——
India Stock, ...	——	——	——	——	——	——
India Bonds, .	40 38 pr	——	——	68 61	61 63 pr	61 62
Ex. Bills 2d. ...	1 pr	2 4 pr	1 1 4 pr	2 5 pr	1 5 pr	4 3 6 pm
Omnium, ...	5 6 pr	4 7 pr	——	——	——	——
Cons. for Act.	80 ⅜ 3-8 ⅜	80 3-8 ⅛ ⅜	80 ⅜ 79 ⅝	80 79 1-8	80	79 ⅝ ⅜ 5-8

THE SCOTSMAN.

EDINBURGH, SATURDAY, *April 6.* 1822.

TO CORRESPONDENTS.

The *Case* sent us by a *Friend to truth* is very sensible, but is not in the shape which we think most suitable for such a subject —— We have not had time to answer the query of *W. M.* but may possibly be able to do so next week —— We would be glad to publish the statement sent us by a *Veteran*, but as his letter is anonymous, we must first satisfy ourselves as to the accuracy of the facts.

Our public establishments, whatever may be their defects, have at least the merit of consistency. An impartial person, who has followed Mr HUME in his laborious and most useful investigations, must, we think, admit, that the extravagance of which the country complains is not an accidental blemish found in some obscure or neglected corners, but a radical vice, tainting, more or less, every part of the system. Not that every salary in our public establishments is too large; but in all the great departments there are many offices which are overpaid, many others which could easily be dispensed with, and not a few whose utility can only be discovered by the help

THE LATE FATAL DUEL.

This subject is one of the highest interest and importance, not only to the individuals more immediately concerned, but to the public in general. The circumstances which led to the meeting are the topic of general conversation, and have been very industriously perverted in publications on the ministerial side of politics. Our reasons for not going into details, or even correcting these misrepresentations, will be given afterwards. Our own opinions respecting the right of discussion are well known. But very different opinions are en-

THE SCOTSMAN.
6 April 1822

Edinburgh May 31st
1814.-

Dear Sirs and Dear Madams.

I beg leave to state in my own name and in name of my wife as far as we are interested as Heirs & Executors of George Cuming Esq^r late of Springfield that we are desirous that the whole of his succession should be wound up and settled as speedily as possible, & request that you will without further delay, use every means in your power for that purpose. —

Having seen several States of his Property made up by Mr Robert Hunter of Richmond Place which have been ~~separately~~ approved of by us and the other Heirs and Executors and in part already acted upon, particularly the first dated 30th April 1811 wherein it is purported the Publick funds which belonged to George Cuming Esq^r in right of his Father Thomas Cuming Esq^r shall be ~~transferred~~ paid to us the Executors of the said George Cuming Esq^r And we request that the said funds be made over accordingly

as therein proportioned. — We also further intreat, that the Heritable part of the Property may be advertised in the Newspapers & brought to a publick Sale with all possible dispatch. — The length of time which has already elapsed since the death of George Cumming Esq^r renders it most necessary that a final settlement be obtained without further delay.

I am very respectfully
Dear Sirs and Dear Madam
Your Most Ob^t Humble Serv^t
Alexander Boswell

To Mrs Janet Cumming
Sir Wm Miller Bart
& Hugh Warrender Esq^r W.S.
Surviving Trustees of Wm Cumming
& Thomas Cumming Esq^r late
Bankers in Edinburgh

THE LATE LADY BOSWELL.—The death of Grace Lady Boswell, which is just announced, recalls one of the most exciting of the political reminiscences of a past generation. Her husband, Sir Alexander Boswell, Vice-Lieutenant of Ayrshire, was the eldest son of Dr Johnson's biographer, and was, like his father—and unlike his grandfather, old Lord Auchinleck—a Tory of the Tories. He was charged by Mr Stuart of Dunearn with writing a political song of an offensive nature, was called out, met his opponent, who was attended by the Earl of Rosslyn (his own "friend" being the Hon. John Douglas, the Marquis of Queensberry's brother), at Auchtertool, near Balmuto, March 26, 1822; the ball of Mr Stuart struck him on the shoulder and entered the spine, and he died shortly afterwards at Balmuto House. Mr Stuart was tried for murder, June 10, 1822; Jeffrey defended him, and he was acquitted. But the sensation caused by this avowed political duel was immense. Lady Boswell had lived in retirement for the last forty-two years.—*Daily News.*

1811 Nov.r 11. [illegible] Surrender granted order on [illegible] £1,000

[illegible] £1,000

[illegible] £7,12.9

[illegible]

Edinr.h June 1814.